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RECIPROCAL TRADE AND MARKET ACCESS LEGISLATION

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

SECOND SESSION

JULY 26, 1982

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RECIPROCAL TRADE AND MARKET ACCESS LEGISLATION

MONDAY, JULY 26, 1982

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C.

The subcommittee met, at 2:10 p.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

[Press release of Friday, July 16, 1982]

THE HONORABLE SAM M. GIBBONS (D-FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES A PUBLIC HEARING ON MONDAY, JULY 26, 1982, ON RECIPROCAL TRADE AND MARKET ACCESS LEGISLATION

The Honorable Sam M. Gibbons (D-Fla.), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee on trade will hold a public hearing on Monday, July 26, 1982, on reciprocal trade legislation and the issue of reciprocal market access. Bills to be considered during this hearing include H.R. 5383, H.R. 5596, H.R. 6433, and H.R. 6773. The hearing will also address the trade implications of H.R. 5205. The subject hearing also includes information and testimony already received in the May 24, 1982, hearing on H.R. 5383 (services) and H.R. 5579 and H.R. 6433 (high technology trade). The hearing will begin at 2 p.m., in room 1100 Longworth House Office Building.

Although the United States is a party to several agreements designed to limit trade barriers through the use of nontariff rules, it is becoming increasingly apparent that many of our trading partners continue to deny market access for American goods and services. To achieve this protection, many countries have adopted a baffling array of nontariff devices, investment restrictions, barriers to internal distribution, and subsidy programs. The result of such practices is to deny American businesses the freedom of access to foreign markets which other countries enjoy here in the United States. This causes the loss of vital job opportunities in our most competitive industries, and substantially increases the risk of protectionist actions to retaliate against foreign restrictions. Many of these practices are not adequately addressed under existing international agreements.

U.S. trade law presently contains authority for the President to respond to unfair foreign policies or violations of trade agreements. In addition, the General Agreement on Tariffs and Trade (GATT) provides a framework for international resolution of such disputes. However, consideration must be given to strengthening present law, both to assure maximum flexibility for responding to foreign policies and to give impetus to further international negotiations. The legislative proposals to be considered during the hearing include the following:

1. Identification and analysis of foreign trade barriers and appropriate actions to achieve their elimination;

2. Amendments to section 301 of the Trade Act of 1974—the retaliatory provision of our trade laws—to clarify the applicability of the statute and allow its more effective use under appropriate circumstances; and

3. A mandate for the President to negotiate international rules in new areas of concern such as investment, services, and high technology.

The Subcommittee welcomes discussion of other suggestions for inclusion in such legislation.

Testimony will be received from invited witnesses only, including representatives from the Administration, business groups, and organized labor.

Any interested person or organization may file a written statement for inclusion in the printed record. Persons submitting a written statement should submit at least six (6) copies of their statement by the close of business, Monday, August 2, 1982, to John J. Salmon, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Room 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements for the record of the printed hearing wish to have their statements distributed to the press and the interested public, they may submit 50 additional copies for this purpose if provided to the Committee during the course of the public hearing.

Chairman GIBBONS. Good afternoon, ladies and gentlemen.

This is a meeting of the Trade Subcommittee of the Ways and Means Committee. The purpose of this hearing is to receive testimony on reciprocal trade and market access legislation. Support for such legislation has grown considerably in the past year, and we have a distinguished group of witnesses here today to address the various proposals which are now before us.

Although there are several international agreements to eliminate trade barriers, it is becoming increasingly apparent that many of our trading partners continue to deny full market access for American goods and services. Foreign practices which limit our success in overseas markets include investment restrictions, barriers to the internal distribution of goods and services, and foreign industrial policies that distort trade patterns.

Supporters of reciprocal legislation contend that its adoption is essential if we are to strengthen procedures for identifying and responding to these foreign practices. They also support a stronger congressional mandate for bilateral and multilateral negotiations to eliminate such barriers—including the negotiation of multilateral rules in areas such as services, high technology, and investment.

U.S. trade law presently contains authority for the President to respond to unfair foreign policies or violations of trade agreements. In addition, the General Agreement on Tariffs and Trade [GATT] provides a framework for international resolution of such disputes. However, consideration must be given to strengthening present laws in order to assure maximum impact of these laws.

In addressing these issues, we must also give serious consideration to some of the unanswered questions about reciprocal trade legislation. Under what circumstances would congressional action lead to foreign retaliation? Would some groups seek to use such legislation as a justification for building up our own trade barriers?

Would adoption of legislation represent a departure from the established principles of U.S. trade policy? Is such legislation inconsistent with our continued participation in the multilateral trading system?

I hope this hearing can serve as a basis for guiding us in the direction of constructive action. We all want to do something about the inequitable situation confronting our exporters. These inequities cause the loss of vital job opportunities in our most competitive industries, and they substantially increase support for far more protectionist legislation.

I believe it would be a mistake for us to try to break down foreign barriers to trade by putting up new, widespread barriers of our own. Retaliation of this nature only creates more trade problems.

However, we must consider suitable measures that will show our trading partners we mean to deal with unjustified trade barriers. For instance, we simply cannot afford to let a country like Japan continue to benefit from one-sided free trade. Admittedly, the Japanese are hard workers and produce a number of quality products at competitive prices. But so do we. There is no reason why Japan should enjoy such unlimited access to our market while making it so difficult for U.S. companies to invest and distribute their products in the Japanese home market.

If legislation of this type can help to enforce U.S. rights and promote more equitable conditions in world trade, then we have an obligation to give it serious consideration.

We have a lengthy list of witnesses today, and in order to expedite matters we ask that you summarize your written testimony as much as possible. Your full statement will be made a part of the record.

Our very fine member, Mr. James R. Jones, a member of this subcommittee, and the chairman of the Budget Committee, has written me a letter that he asks I read into the record at this point.

It is a letter dated July 26, addressed to me. He says,

I am writing to thank you for holding a hearing on the issues of reciprocal market access and for taking up H.R. 5596, the Market Access bill that I have worked on with Congressman Bill Frenzel. I apologize for not being able to attend this important hearing, but a commitment I made to one of our colleagues several months ago requires me to be out of town today.

As you know, I have a strong commitment to free trade, but I also believe that trade must be fair. Clearly, the United States currently provides more open access to its markets than many of our trading partners. If we are to convince the American people to resist the rising tide of protectionism that has been spurred by the domestic and international economic problems, we must find an effective way to enforce U.S. rights to market access abroad.

H.R. 5596 attempts to address this problem by making it a violation of section 301 of the Trade Act of 1974 to deny U.S. exports substantially equivalent commercial opportunities. While I understand the concerns which have been raised about this language, I also believe that we cannot afford to adopt language which would be perceived by the American public as ineffective.

I hope that those witnesses who express concern about substantially equivalent commercial opportunities will be able to offer positive suggestions for alternatives that will address their concerns while providing a real alternative to domestic content requirements or tariff barriers.

I very much appreciate your taking time to address this important issue and I look forward to reading the testimony of our fine witnesses. Sincerely yours, James R. Jones, Member of Congress.

Do any other members have statements they would like to make?

Mr. FRENZEL. No, Mr. Chairman. I do not want to make a statement. I just want to thank the chairman for having these hearings. On our side, we are looking forward to the testimony as eagerly as you are.

Chairman GIBBONS. Our first witness was to have been Mr. William E. Brock. We understand Mr. Brock and Mrs. Brock are both ill. So our first witness is our distinguished Deputy U.S. Trade Representative.

You may proceed.

STATEMENT OF HON. DAVID R. MACDONALD, DEPUTY U.S. TRADE REPRESENTATIVE, ACCOMPANIED BY MICHAEL HATHAWAY, DEPUTY GENERAL COUNSEL, U.S. TRADE REPRESENTATIVE

Mr. MACDONALD. Thank you, Mr. Chairman.

Ambassador Brock is on his back and deeply regrets his inability to testify before this committee on this important subject.

Mr. Chairman, I, like others, have Ambassador Brock's full statement. I will attempt to summarize it in such a way as not to extend the proceedings.

Chairman GIBBONS. Fine, sir.

Mr. MACDONALD. Reciprocity, Mr. Chairman, is not a four-letter word. It is, in fact, the cornerstone of the international trading system which the United States has helped mold. Since the Reciprocal Trade Agreements Act of 1934, the United States has been at the forefront of every major multilateral trade negotiation aimed at obtaining the mutual liberalization of trading practices and policies.

The heart of these negotiations, including the Kennedy round in the 1960's and the Tokyo round concluded in 1979, has been the reciprocal liberalization of trade.

As the members of this committee know, the commitment to an open trading system requires strong action to preserve its benefits. The dynamics of international trade are such that one must take long strides forward to avoid sliding back. Whatever we might gain in our pursuit of an open trading system will be lost if we ignore attacks upon it by others or fail to pursue increased market opportunities for our goods, services, and investment.

History has shown that no nation can long sustain public support for an open trade policy unless its people sense that there is fairness and equity in the practices of other countries as well as their own, and that they see tangible benefits from the application of that policy.

Adherence to a free trade policy requires us to enforce strictly existing trade agreements, to enforce strictly domestic law implementing those agreements, to strengthen our domestic trade laws to make them more useful and responsive to the needs of those they protect, and to seek expanded coverage of trade issues under the mutually accepted international framework of the General Agreement on Tariffs and Trade [GATT].

It is from this vantage point that we must view the many pieces of trade legislation that have been introduced in this Congress. This will be a difficult time and there will be much to be done.

The contributions of the members of this subcommittee have been important and must be continued. Your legislative efforts have identified specific efforts that need attention: Trade in services, treatment of U.S. investors abroad, and increasing pressures in the high-technology industries.

This administration firmly believes that appropriate legislation can be very useful in achieving our international objectives. While it is not possible to comment on each provision of each bill before this subcommittee today, I do wish to take this opportunity to state

that the administration does support positive reciprocity legislation such as H.R. 6773, and supports the intent of those efforts by you, Mr. Chairman, and by Congressman Frenzel and Congressman Jones.

There are many provisions in H.R. 6773 which have elements similar to those of other pending legislation which the administration can support. This support is shared by a wide range of industrial and agricultural interests, including the American Farm Bureau, Business Round Table, Chamber of Commerce, National Agricultural Chemicals Association, National Association of Manufacturers, National Cattleman's Association, Emergency Committee for American Trade, The National Grange, Semiconductor Industry Association, and the Tanners' Council of America.

Let me outline those elements of the legislation which provide the basis for the administration's support.

We are currently operating without any meaningful international rules governing services trade. It is timely for legislation to add specific negotiating objectives with respect to the international trade in services. With respect to investment, negotiating objectives of reducing or eliminating trade distorting barriers to, and developing international rules for, investment, including dispute settlement procedures, will help insure the free flow of foreign direct investment.

With respect to high technology, high-technology goods and services and technical knowhow itself are essential to our economic development, industrial competitiveness, and national security.

The administration believes that specific negotiating objectives with respect to high-technology products and related services will support our efforts to counter international barriers and distortions to trade and investment in this area. Since the tariff-cutting authority of the proposed extension of section 124 of the Trade Act of 1974, which we strongly support, contains constraints that make it insufficiently flexible to permit negotiating on key high-technology items, general tariff-cutting authority for high-technology products should be considered as priority for enactment this year.

This administration welcomes global reciprocity as an objective or principle of overall U.S. trade policy. However, to establish reciprocity such as through a new section 301 cause of action on a bilateral, sectoral, or product-by-product basis would result in a counterproductive trade policy.

As we explore the issues raised by the legislation now before the subcommittee, the United States will again be assuming an important leadership role in promoting freer and fairer trade.

This Congress and this administration fully comprehend that agreements on services and investment must be negotiated, that the GATT must be tested and strengthened, that agreements must be enforced, and that fair and equitable market opportunities must be obtained.

Now let me turn to H.R. 5205, the "mirror" bill, which was proposed by the President pursuant to his authority under section 301 of the 1974 Trade Act. I commend this subcommittee for responding so promptly to the President's recommendation.

The "mirror" bill was one of several options considered by USTR in the context of the 301 investigation. It was selected as the "ap-

propriate" action to be taken under 301 because it constitutes a measured response to the Canadian practice.

Let me emphasize, as did President Reagan in his message to Congress, that our purpose in proposing this legislation is to obtain the elimination of the Canadian practice; and let me remind the committee that should the "mirror" bill not bring about a resolution of the dispute, the President is not foreclosed from taking further action pursuant to section 301 if he deems it appropriate in order to achieve this purpose.

Let me therefore ask the committee to act expeditiously and favorably on H.R. 5205.

That concludes my summary, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF DAVID R. MACDONALD, DEPUTY U.S. TRADE REPRESENTATIVE

Mr. Chairman, reciprocity is not a four letter word. It is in fact the cornerstone of the international trading system which the United States has helped mold. Since the Reciprocal Trade Agreements Act of 1934 the United States has been at the forefront of every major multilateral trade negotiations aimed at obtaining the mutual liberalization of trading practices and policies. The heart of these negotiations, including the Kennedy Round in the 1960's and the Tokyo Round concluded in 1979, has been the reciprocal liberalization of trade.

While there have always been and always will be pressures for short term solutions to economic problems, we are firmly resolved to continue more vigorously than ever before our efforts to ensure a free world trading system. We will not change course now.

The Reagan Administration statement on U.S. Trade Policy of July, 1981, states that:

"Free trade based on mutually acceptable trading relations is essential to the pursuit of our goal (of a strong U.S. economy) . . . We will strongly resist protectionist pressure. Open trade on the basis of mutually agreed upon rules is in our best economic interest.

"Internationally, we will pursue policies aimed at the achievement of open trade and the reduction of trade distortions while adhering to the principle of reciprocity in our trading relations.

"(Toward this end), we will strictly enforce United States laws and international agreements . . . and we will insist that out trading partners live up to the spirit and the letter of (such) agreements and that they recognize that trade is a two way street."

That statement of trade policy is consistent with the goal and intent of many legislative proposals. That is, to make certain that trade is a two way street. Fair and equitable market opportunities for U.S. exporters, investors, and service industries has been and will continue to be a goal of this Administration. This Congress and this Administration are both examining ways to better achieve this goal, and Ambassador Brock and I look forward to working with this Subcommittee in that endeavor.

We must continue to do this within the context of our overall policy and our international obligations. This does not mean that the trading system is perfect, or that we should never question or seek to improve any provisions of our internatinal obligations. Mr. Chairman, if that were the case, USTR would be redundant. However, we must be clear to avoid a distorted use of reciprocity that could undermine an already vulnerable multilateral trading system, trigger retaliation abroad, and further deprive the United States of export opportunities and erode, if not eliminate, our role as the world leader in liberalizing international trade.

As the Members of this Committee know, the commitment to an open trading system requires strong action to preserve its benefits. The dynamics of international trade are such that one must take long strides forward to avoid sliding back. Whatever we might gain in our pursuit of an open trading system will be lost if we ignore attacks upon it by others, or fail to pursue increased market opportunities for our goods, services, and investment.

History has shown that no nation can long sustain public support for an open trade policy unless its people sense that there is fairness and equity in the practices

of other countries as well as their own, and that they see tangible benefits from the application of that policy.

Adherence to a free trade policy requires us to enforce strictly existing trade agreements, to enforce strickly domestic law implementing those agreements, to strengthen our domestic trade laws to make them more useful and responsive to the needs of those they protect, and to seek expanded coverage of trade issues under the mutually accepted international framework of the General Agreement on Tariffs and Trade (the GATT).

We must not fail to lose sight of the fact that the United States and its trading partners work within the framework of our international obligations. The reason the GATT came into being lay in the desire to eliminate the destructive retaliatory trade practices of the two decades preceding World War II. It has worked to obtain the expansion of world trade over the past thirty-five years. The international process for dealing with new forms of barriers to trade distortions is somewhat frustratingly slow, but that is no justification for the United States to abandon its commitment to free trade, and certainly no justification for our resort to negative unilateral actions. Quite the contrary, it is clearly our best reason for renewing our efforts to strengthen the international rules of the road and make them work.

It is from this vantage point that we must view the many pieces of trade legislation that have been introduced in this Congress. In previous Administration testimony on trade reciprocity four principles were stated that must guide our approach to any new legislation.

First it must be absolutely consistent with our current obligations under the GATT and other international agreements.

Second, it must address multilateral rather than bilateral or sectoral solutions.

Third, it must focus on strengthening international institutions and expanding international agreements to include those areas such as services, investment, and high technology that are not presently covered.

Fourth, it must strengthen the negotiating mandate and flexibility of the President in his effort to achieve more liberalized world trading system and a reduction of barriers affecting U.S. workers and enterprises.

The U.S. Trade Representative, has vigorously pursued this course of action. During the past year our office has initiated 11 section 301 investigations involving eight countries for unfair trade practices. We are now pursuing international dispute settlements in four of these cases, and in two 301 cases filed earlier. Five of this year's investigations were recently initiated concerning the use of subsidies by European nations on the production of specialty steel. Other investigations address barriers to agricultural exports. In addition, we have assisted many smaller industries by providing technical assistance on different processes available for seeking relief from unfair trade practices or competition. It is our intent to continue these efforts during the coming year.

This will be a difficult time and there will be much to be done. The contribution of the Members of this Subcommittee have been important and must be continued. Your legislative efforts have identified specific areas that need attention: trade in services, treatment of U.S. investors abroad, and increasing pressures in the high technology industries.

While the United States can make important contributions to these areas through legislation, an international forum is necessary to have our interests reflected in the international trading system. To this end the United States is actively participating in preparation for the Ministerial level meeting of the GATT next November. It is our hope that this meeting will not only review the operation and the implementation of the multilateral trade negotiation agreements, but also chart a course for international trade activities for the balance of the 1980's. Among our key objectives are the initiation of work programs on services, trade-related investment issues, and high technology. We also hope to use the Ministerial to renew and invigorate trade in agricultural goods through a discipline more closely aligned with that for industrial trade.

This Administration firmly believes that appropriate legislation can be very useful in achieving our international objectives. While it is not possible to comment on each provision of every bill that is before this subcommittee today, I do wish to take this opportunity to state that the Administration does support positive reciprocity legislation such as H.R. 6773, and supports the intent of those efforts by you, Mr. Chairman, and by Congressman Frenzel and Congressman Jones.

There are many provisions in H.R. 6773 which have elements similar to those of other pending legislation which the Administration can support. This support is shared by a wide range of industrial and agricultural interests including:

American Electronics Association (AEA).

American Farm Bureau (AFB).
American Trucking Associations (ATA).
Business Round Table.
Chamber of Commerce.
Chemical Manufacturers Association (CMA).
Computer & Business Equipment Manufacturers Association (CBEMA).
Emergency Committee for American Trade (ECAT).
International Anti-Counterfeiting Coalition.
National Agricultural Chemicals Association (NACA).
National Association of Manufacturers (NAM).
National Cattleman's Association (NCA).
National Foreign Trade Council (NFTC).
The National Grange.
Semiconductor Industry Association (SIA).
Tanners' Council of America (TCA).

Let me outline th se elements of the legislation which provide the basis for the Administration's support:

TOOLS TO INCREASE MARKET OPPORTUNITIES ABROAD

Services: In contrast to trade in goods we are currently operating without any meaningful international rules governing services trade. This is an area in which the United States is experiencing expanding trade opportunities and growing barriers that inhibit those opportunities. It is therefore, timely for legislation to add specific negotiating objectives with respect to international trade in services.

A principle negotiating objective for services of reducing or eliminating barriers to, or distortions of, international trade in services through the development of internationally agreed upon rules would be an important and useful addition to the present negotiating authority of the President.

Investment: With respect to investment, negotiating objectives of reducting or eliminating trade distorting to, and developing international rules for, investment, including dispute settlement procedures, will help ensure the free flow of foreign direct investment. This has the full support of the Administration.

High Technology: High-technology goods and services and technical "knowhow" itself are essential to our economic development, industrial competitiveness, and national security. As international competition in high-technology industries becomes more intense, there is evidence that the competitive position of U.S. high-technology industries is eroding. There are indications that governments are promoting their high-teachnology industries in ways that create strains on the trading system and can retard the rapid pace of technological innovation.

The Administration believes that specific negotiating objectives with respect to high-technology products and related services will support our efforts to counter international barriers and distortions to trade and investment in this area. Since the traffic-cutting authority in the proposed extension of Section 124 of the Trade Act of 1974, which we strongly support, contains constraints that make it insufficiently flexible to permit negotiation on key high-technology items, general traffic-cutting authority for high-technology products should be considered as priority for enactment this year.

Enforcement of United States Rights: It would be also helpful to clarify and provide emphasis for appropriate Section 301 authority in the areas of services and investment. We need to demonstrate to our trading partners our resolve to seek fair and equitiable market opportunities for U.S. interests. The most effective way to do this is for the U.S. interests. The most effective way to do this is for the U.S. government to actively enforce U.S. rights under domestic and international laws, and to develop new international disciplines where needed. The President's current Section 301 invetigative authority includes unfair practices in the areas of services and investment that burden U.S. commerce. This needs to be appropriately clarified. It has always been and will continue to be U.S. policy to welcome market oriented direct foreign investment to the United States. It is also U.S. policy to obtain fair opportunities for U.S. investors abroad to the greatest degree possible.

Several legislative proposals have been made to emphasize reciprocal market access or similar competitive opportunities in the consideration of section 301 cases. Reciprocity as a principle embodied in the GATT and the trade laws, and increased market opportunitites are goals of any free trade policy. Appropriate legislation is welcomed by the Administration. However, we must be careful not to enact laws which will move U.S. trade policy in the direction of bilateral, sectoral, or product-by-product recipriocity. In our view, the primary and preferable method for obtain-

ing fair and equitable market opportunities should always be obtaining liberalization of foreign markets rather than raising equivalently restrictive barriers of our own. Our goal must continue to be that of moving our trading partners foward through negotiations to the level of market openness that will operate to our mutual advantage. We believe that the appropriate definition of the term reciprocity is that the aggregate benefits dervied by each party to an agreement which as the GATT are in a fair overall balance with concessions given by the other party. This has been the underlying principle of our world system for trade in goods since the inception of the GATT in 1948. Through that agreement and its most favored nation principle the United States and other countries have obtained significant economic benfits. Even though the system may have fallen short in some ways, we will adhere to our mutually accepted obligations under the GATT and that must discipline our understanding of a reciprocity principle. Because our current trade laws and our international trading system embody the principle of fair and equitable market opportunities, the Administration supports the clarification of our laws to enhance the effectiveness of interested industries and workers to seek enforcement of that standard.

ADMINISTRATION WOULD OPPOSE ANY STANDARD THAT WOULD MOVE US IN THE DIRECTION OF REQUIRING SECTORAL RECIPROCITY

As noted earlier, this administration welcomes global reciprocity as an objective or principle of overall U.S. trade policy. However, to establish reciprocity such as through a new section 301 cause of action on a bilateral, sectoral or product-by-product basis would result in a counterproductive trade policy. Such an independent standard for unilateral action under Section 301 could mean that instead of judging the fairness of foreign market access according to internationally agreed standards, we would be required to judge it by the access accorded to foreigners in the U.S. market. That kind of result would undermine the multilateral approach to international trade and would be opposed by the Administration.

The issue of reciprocity is complex and a U.S. reciprocity policy, therefore, needs to be formulated and implemented in a comprehensive manner. It is a basic fact of economic life that national economies differ. Countries don't produce or necessarily have the capability to produce everything. For the past 35 years we have had to take this fact into consideration in negotiating trade agreements under the GATT.

We knew that we couldn't negotiate access to the Japanese market for U.S. wheat producers by offering access to our market for wheat to the Japanese. The Japanese are in no position to accept such a deal. Likewise, we couldn't expect to nogotiate access to foreign markets for our computer exports by offering access to our computer market to countries which don't produce and which don't expect to produce computers. Therefore, a narrow sectoral approach to trade negotiations could not be productive.

Instead, we have negotiated agreements with our trading partners which cover a broad range of sectors, with an overall balance of concessions which we would call reciprocity. Nor can I support the use of the term reciprocity if it means seeking bilateral balance in the narrow sense. Even given the problems we face with Japan in seeking greater market access, it would be dangerous to seek a bilateral balance of trade with them as our standard of fairness. If we were to do so, other countries with which we maintain trade surpluses (such as the EC) would certainly have grounds for pursuing the same policy with regard to the U.S.

In view of the principles and problems which I have set forth today, one can say that there are elements in each reciprocity bill which we could support as well as elements which would pose difficulties for the Administration and for the world economic order. Some of the bills under consideration at this hearing today in one way or another attempt to provide for the improvement and strengthening of our negotiating authority and leverage in areas of critical importance to the Administration such as services, investment and trade in high technology goods. These provisions can be very useful in our efforts to address these critical issues with our trading partners at the GATT Ministerial as well as in overall efforts to preserve by strengthening the international trade and investment system throughout the remainder of this century.

CONCLUSION

As we explore the issues raised by the legislation now before this Subcommittee, the United States will again be assuming an important leadership role in promoting freer and fairer trade. As the initiator of very major negotiation, this is not an unusual or unexpected responsibility.

This Congress and this Administration fully comprehend that agreements on services and investment must be negotiated, that the GATT must be tested and strengthened, that agreements must be enforced, and that fair and equitable market opportunities obtained.

Throughout this exercise, let us remember that the decisions we make will set the tone in world trade centers. It is with this sense of responsibility that we will work to open foreign markets, not erect new barriers. Any other action would be contrary to the interests of our Nation or the world trading system.

Mirror-Image Bill: Now let me turn to H.R. 5205, the "mirror" bill which was proposed by the President pursuant to his authority under section 301 of the 1974 Trade Act. I commend this Subcommittee for responding so promptly to the President's recommendation.

This legislation was proposed initially by President Carter in 1980 and again by President Reagan in 1981 as a response to the Canadian practice of denying tax deductions to Canadian taxpayers who purchased advertising services from U.S. broadcasters if such advertisements were directed primarily at the Canadian market. The Canadian practice was the subject of a 301 petition filed by a group of U.S. border broadcasters in 1978. In 1980, President Carter found this practice, which costs U.S. broadcasters approximately $25 million annually in lost advertising revenues, to be unreasonable and a burden on U.S. commerce within the meaning of section 301.

The Canadian practice began in 1976 with the enactment of Bill C-58 which amended the Canadian tax law as described above not only with respect to the broadcasting media but also with respect to newspapers, magazines, etc. Since that time the U.S. Government has tried repeatedly to seek a negotiated solution to this problem as it affects U.S. broadcasters which would meet the needs of both Canada and the U.S. Negotiated solutions were sought both in the context of the U.S.-Canadian tax treaty and the 301 investigation. However, to date Canada has not been willing to negotiate at all on this issue because Canada believes enactment of C-58 was necessary to promote Canadian cultural development.

Thus, the U.S. has been left with no choice but to take action under section 301. The action taken by President Carter and reiterated by President Reagan is the proposal of the legislation before you. The effect of H.R. 5205 would be to "mirror" in U.S. law the Canadian practice embodied in C-58. However, the "mirror" provision would apply only to advertising services purchased from broadcasters located in countries which have a similar practice vis-a-vis U.S. broadcasters. Thus, it would apply to Canada but not to Mexico. Moreover, if Canada at any time ceases its practice, the "mirror" provision will not longer apply to Canada. I might note that the Presidential decision to propose the "mirror" bill was made only after USTR conducted a public hearing on the question of "mirror" legislation. During that hearing, no U.S. taxpayer indicated opposition to the Administration proposal. While some opposition was raised when the Finance Committee's Subcommittee on International trade held a hearing on this matter, it is our view that those objections cannot outweigh our need to respond to Canada's unwillingness to work with us to resolve this problem.

The "mirror" bill was one of several options considered by USTR in the context of the 301 investigation. It was selected as the "appropriate" action to be taken under 301 because it constitutes a measured response to the Canadian priactice. Let me emphasize, as did President Reagan in his message to Congress, that our purpose in proposing this legislation is to obtain the elimination of the Canadian practice; and let me remind the Committee that should the "mirror" bill not bring about a resolution of the dispute the President is not foreclosed from taking further action pursuant to section 301 if he deems it appropriate in order to achieve this purpose.

I will close by saying that I am convinced that if Canada were willing to work with the U.S. on this issue, a solution could be found which could meet Canada's cultural development interests as well as the concern of U.S. border broadcasters. However, in the absence, thus far, of Canadian willingness to seek a mutually acceptable resolution of this issue, the U.S. must act to demonstrate its strong and continuing concern about unreasonable restraints on U.S. access to foreign markets in the services sector and its willingness to take all appropriate action to improve U.S. access to such markets. Furthermore, we feel a commitment to demonstrated, not only to the border broadcasters who have shown admirable patience in pursuing a remedy through the 301 process, but also to other service industries that section 301 is an effective means to remove foreign barriers to U.S. service exports. We therefore urge the Committee to act favorably and expeditiously on H.R. 5205.

Chairman GIBBONS. Sometimes charges are made that we are abandoning our GATT concept of reciprocity for something that is narrow and far less practical. How do you feel about that?

Mr. MACDONALD. If I understand the point that is being made by the people who make that kind of allegation, I would respond by saying that the GATT contains two interrelated enforcement concepts that provide us with the tools that we need to insure an open trading system. As things stand now, and assuming that we can assure ourselves that the GATT will act on our behalf when we have a meritorious case, we should stick with GATT principles of a broad multilateral reciprocity rather than attempt to urge or legislate a specific sectoral reciprocity.

Chairman GIBBONS. You are not worried then with the proposed legislation from that point of view?

Mr. MACDONALD. In the product area we feel that our powers under the current trading regime are adequate; but in the services and investment area, there is no international regime at all in governing those areas; and particularly as they relate to an impact upon trade.

In those areas, we feel that the proposed legislation is highly beneficial and, indeed, necessary to the obtaining ultimately of the kind of discipline for services and investment that we have in products.

Chairman GIBBONS. Do you think the measures we are considering here today would be the kind of measures that would justify retaliation by our trading partners?

Mr. MACDONALD. Excuse me, Mr. Chairman? I missed that.

Chairman GIBBONS. I am worried about this problem of retaliation. I don't think any of us want to start something that is just going to escalate up.

My question is, Do you think that the measures that we are considering here today would justify retaliation against us by our trading partners?

Mr. MACDONALD. Under no circumstances. The measures in the bill that we have endorsed do not in our view violate our international obligations at all.

Chairman GIBBONS. Mr. Frenzel?

Mr. FRENZEL. Thank you, Mr. Chairman.

I have only one comment. Mr. Conable, who was obliged to leave us for a moment, did have some things he wanted to talk to Ambassador Macdonald about. If he does not return in time, I would like to carry on that discussion for Mr. Conable.

In the meantime, in your testimony, Mr. Ambassador, you indicate that you need certain negotiating authority that goes above and beyond the 124 authority; is that correct?

Mr. MACDONALD. Yes.

Mr. FRENZEL. Can you elaborate on that?

Mr. MACDONALD. In the high technology area.

Mr. FRENZEL. Why do you find the 124 restricted so that you needed additional authority?

Mr. MACDONALD. The 124 authority, as you know, Congressman Frenzel, is limited in a number of ways in terms of its scope. There are about four different tests that essentially restrict 124 authority to handle the kind of cleanup operations that may be left unsettled

as a result of the Tokyo round negotiations; and indeed, the authority is keyed into the authority in the Tokyo round negotiations in some ways.

Our feeling is that it may be desirable in the high technology area to eliminate barriers entirely and allow a full competitive flow of forces. We have done this to some degree with Japan and semiconductors by reducing mutually our tariffs down to 4.2 percent. Ours was 5.3 and Japan's was 10.3.

The European tariff on semiconductors, I believe, is 17 percent. For it to proceed further, it may be wise for everyone to sit down and say, let's just let the flow of this kind of technology take place without the inhibitions of tariffs.

Mr. FRENZEL. You are, thus, contemplating for high tech, a more aggressive, radical kind of tariff negotiation than you would under the authority for tidying up that is embodied in 124?

Mr. MACDONALD. Creating a pool of free competition; that is a possibility, Mr. Frenzel. I do not want to indicate that that is the way we are going to go, because I think a lot of study needs to be done and a lot of consultation needs to take place in this area.

Mr. FRENZEL. I agree with you, Mr. Ambassador. I notice in the bill which passed the Finance Committee only the high tech negotiating authority was included. As I understand your position, you would like to have both the 124 authority and the high tech authority; is that correct?

Mr. MACDONALD. Yes, sir.

Mr. FRENZEL. Thank you very much for your testimony.

Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Bailey?

Mr. BAILEY. Thank you very much, Mr. Chairman.

Mr. Ambassador, my old friend, is it fair to say that you view H.R. 6773 and its brethren as not the first certainly in a long line of legislative proposals that are consistent with the view of fair trade that this administration holds and hopefully of what the history of trade relations between the United States and other contries has been; is that a fair statement?

Mr. MACDONALD. Did you say the first in a long line of legislation?

Mr. BAILEY. I said not the first, I am sure, in a long line.

Mr. MACDONALD. Not the first?

Mr. BAILEY. Yes.

Mr. MACDONALD. It is a bill that we believe will promote both fair and free trade as many prior bills, but not all perhaps have done.

Mr. BAILEY. What else does it do?

Mr. MACDONALD. What else does——

Mr. BAILEY. What is it doing that you want to do? What additional things does it do? I don't want to be unfair to you. I don't know how familiar you are to the legislation.

Mr. MACDONALD. I thought I testified with respect to it, it provides us with authority to commence unfair trade practices on services——

Mr. BAILEY. In high-technology items?

Mr. MACDONALD. In investment, among other things.

Mr. BAILEY. Does it represent a quantum leap? A change from past policies? Is it a philosophic diversion? Is it confronting new realities?

Mr. MACDONALD. I think the latter, the last of the alternatives you mentioned, the new realities being that international investment and trade in services have become major items of employment for our citizens. Major areas of employment; and yet they are not now subject to any discipline. Any country, with impunity, can tell our service concerns, for example, American Express, to go home and refuse it access to their market.

With the authority of this bill, we would hope to promote——

Mr. BAILEY. Where does the United States of America stand in terms of services and/or high technology items in relation to her major trading partners, specifically Western Europe and Japan?

Mr. MACDONALD. We have a positive balance of services with both Western Europe and Japan.

Mr. BAILEY. Do we have an edge in those areas?

Mr. MACDONALD. Bilaterally we have a balance of services with respect to West Germany and Europe. We have a negative balance of high technology trade with Japan, but we appear to have a positive balance with Europe.

Mr. BAILEY. Why do we have a negative balance with Japan in high-technology items? Is it because of a definitional thing? Are we talking about certain areas where they have perhaps a certain product area or where they have an overwhelming effect or something?

Mr. MACDONALD. I would have to be giving a personal opinion.

Mr. BAILEY. I would love that.

Mr. MACDONALD. I think they have combined an industrial policy of heavy promotion of investment targeted to high technology.

Mr. BAILEY. A government policy?

Mr. MACDONALD. A government—partially government policy.

Mr. BAILEY. That smacks of planning.

Mr. MACDONALD. It smacks of a particularly unique kind of planning that they seem to be capable of.

Mr. BAILEY. How does it—I am sorry?

Mr. MACDONALD. Combined with an ability in one way or the other to avoid what we would consider to be market forces in the trading in high-technology field.

Mr. BAILEY. What you seem to be saying to me is the traditional American concepts of free enterprise, what perhaps free trade has traditionally meant, and what fair trade needs to mean in the context of those two sometimes elusive philosophical goals that we all share has lead to the writing of bills like H.R. 6773; legislative attempts to come to grips with something which, you have said, goes far beyond what movement into the high tech area means, far more basic than that; I think you realize that.

That leads to my next question. What you really said to me, it seems, is that free enterprise or modern state capitalism, as I call it, as it is developing in other countries, with all the implications of planning, national goals, brings me to a basic question: Financing. It is financing?

What do you recommend that we do? Is there some way these bills could be modified? I really think the area of financing has a

great deal to do with Government policy. It is an area that is so integrated in the different areas of those bills, under our trade agreements—if you look at the GATT, at financing, and look at subsidization which is supposedly prohibited, is there something we can do in the area of financing? I really keep seeing it rear its ugly head as a barrier to trade.

Mr. MACDONALD. You have launched into a cosmic——

Mr. BAILEY. If it is cosmic, we better be careful. If it gets away from us, I think it will lead to trade wars that will be very difficult for us to handle. It seems to be getting there right now.

Mr. MACDONALD. I think one of the things we can do and have been trying to do, both Congress and the administration, is to stop treating our own multinational enterprises as unwanted stepchildren and attempt to——

Mr. BAILEY. You were for adequate funding for the Export-Import Bank?

Mr. MACDONALD. Are you talking about internally?

Mr. BAILEY. Internally.

Well, I will leave you with this, Mr. Ambassador. I think we are just on the threshold. I think we are on the edge of a very exciting period in history if we handle it properly by dealing with the growth of the international economy.

I don't know as much about it as I should. I am still learning; but I would hope we can look at the area of financing specifically, because of the shift that it is causing in technologies, in basic industries around the world. It is introducing a resource distortion, an investment distortion that is just, I think—I really believe—getting out of hand. I think if we are not careful, it will disrupt our international environment to the point where it will cause many, many dangers.

I would hope—I don't think this is a very big step. I think it is a nice continuation. I think we ought to do more. I would like to see the administration try to do more with that antisubsidy prohibition. Did France ever sign that, by the way? Are they a signatory?

Mr. MACDONALD. Yes. They agreed to it. The consensus arrangement.

Mr. BAILEY. A subsidy would not be a——

Mr. MACDONALD. The limitation on credit on export arrangements; yes, they did. However, that limitation still leaves all signatories with below market interest rates to be offered to their exporters.

In other words, it doesn't solve the problem as far as we are concerned with respect to exports to the United States where the domestic company has to go to his bank and pay the market rate and the imported product comes in with—at a rate which albeit in conformity with the consensus arrangement, still substantially below the market rate.

Mr. BAILEY. Within the agreements, though; we have agreements, for example, with Japan. We have had a couple of major deals by municipalities in this country where the agreements were made only, in one case, on a per car deal from the Budd Co. where the American technology, which incidentally was as good or better, was not chosen, although it was $20,000 a car cheaper, because long-term financing was more expensive.

I think that is something we just—if we are ever going to talk about it, it is funny to be talking about high technology, hear rhetoric about it, which I know you believe inside——

Mr. MACDONALD. Did you say I was laughing? I am doing what about it?

Mr. BAILEY. I said the rhetoric you use in describing it, although you believe in it, you feel sincerely about it inside, the high technology, that kind of thing, I think we all know the impact on human problems of high technology items—that it's the way we are going to beat inflationary problems, the way we will beat the human misery through better investment, development of better technology.

If investment patterns and purchasing patterns are going to be distorted by credit distortions at the cost of credit distortions, then we are all going to suffer.

I think we ought to do a little more about it.

Mr. MACDONALD. You put your finger on a very real problem.

This bill does not purport to operate on that particular problem.

Mr. BAILEY. Should it?

Mr. MACDONALD. No. I think it is best to take those things one bite at a time.

Mr. BAILEY. No further questions; thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Brodhead?

Mr. BRODHEAD. Thank you, Mr. Chairman.

Mr. Macdonald, in reviewing your statement, I would refer you to page 10, where in the paragraph beginning "Administration would oppose any standard that would move us in the direction of requiring sectoral reciprocity," you make the statement that such an independent standard or unilateral action under section 301 would mean that instead of judging the fairness of foreign market access according to internationally agreed standards, we would be required to judge it by the access accorded to foreigners in the U.S. market.

I guess I am a little troubled by that. What you seem to be saying there is that internationally agreed standards are more important than fairness to U.S. industries and fairness to American workers. I wonder whether we as public servants are discharging our responsibility when we have that set of priorities? It would seem to me that if product A is not admitted into country X but product A when produced by country X is admitted into the United States, then we have a prima facie case of unfairness, of discrimination against American workers. I don't understand what is wrong with our saying we are going to apply the same standards to you that you apply to us.

Mr. MACDONALD. May I answer that?

Mr. BRODHEAD. Please.

Mr. MACDONALD. I must say, Mr. Brodhead, you have, interpreted that sentence in a most understandable way. The point, however, is that, in the overall trading system we will profit more ourselves by assuring that we receive in other countries' markets a reception that, one, is no less favorable than any third country to that country, and, two, no less favorable than the products produced in that country. Those are our present international rights

and obligations under the most-favored-nation clause and the national treatment of products clause of the GATT.

Mr. BRODHEAD. I recognize that.

Mr. MACDONALD. So I think if we can just succeed in enforcing those two standards, we will be much better off. Take Singapore, for example, which probably has the freest trading system in the world. Singapore said, we don't require any test whatsoever of our telecommunications equipment, we would rather have you live up, reciprocally, to our standards, therefore you should not even test any standards. The FCC would lose all jurisdiction because we would be required to reciprocate Singapore's action.

Mr. BRODHEAD. Isn't that what we are talking about when we talk about free trade? Isn't that where we ought to be?

I don't know whether you can be just a little bit pregnant or not. How can you be a little bit for free trade? Is the administration for free trade or is it not for free trade?

Mr. MACDONALD. I don't think there is anything inconsistent about allowing the FCC to pass upon the capability of telecommunications equipment and free trade.

Mr. BRODHEAD. I guess that is the problem I have with the whole approach in recent years. That is, it seems to me we say we are going to have a little bit of free trade; but that some restrictions are good and some restrictions are bad. A lot of American businesses and American workers are pretty frustrated by their inability to get on the "good" list, the list of good restrictions as opposed to the list of bad restrictions.

We don't have a free trade policy in the sense that there are all sorts of restrictions that we have, and we don't insist that our trading partners have a free trade policy. Yet at any time anybody proposes or most of the time when anybody proposes any additional restrictions or even, at a minimum, reciprocity, the administration says "free trade, we must have free trade."

Now you are here telling me we shouldn't have free trade in telecommunications equipment.

Mr. MACDONALD. I don't think I am saying anything inconsistent with what this administration has said in the past.

Mr. BRODHEAD. I am sorry if my words were interpreted that way. I don't mean to suggest that. I am not picking on you. I have a problem with this administration and with the last one.

Mr. MACDONALD. In some cases, we demand more than reciprocity. If the trading partner that we are dealing with has a more liberal regime than we do with respect to its own products, we expect that same regime to apply to us, even though we may have a more restrictive law that applies.

Congress in its wisdom has decided that there will be certain tests that products will be subjected to that are imported into the United States or produced in this country. As long as we maintain the same test for all products, both our own and others, and as long as we can enforce that principle on other countries, I think we will be in pretty good shape. Our problem, if I may say so—and I hope this is what you are driving at, and I would like to be able to satisfy you with respect to it. Our problem is that in the past and extending through all administrations, Republican and Democrat,

we have not insisted on even the rights that we are allowed to insist upon in the GATT.

We are determined to end that, not because we are smarter than anyone else but because our margin for error, because of our eroding competitive position, has decreased to the point where we must insist on it. Illustrating that to our trading partners is taking a little time, but I think that we will get there. We find few, if any, Japanese nontariff barriers, for example, that cannot be solved under the existing trade laws that we now have in products. I have been talking strictly about products. I haven't been talking about services or investment. I should always make that clear.

Mr. BRODHEAD. I think I certainly would agree with your statement that the United States has not insisted on all of its rights even under GATT. I think that that is one of the reasons clearly behind some of this legislation, to give the President and the Trade Representative a method for doing that and to express the sentiment of many in the Congress that more of that ought to be done.

I think there are very few of us here—if any—who in theory are protectionists. We are all, in theory, free traders; but, many of us are troubled by the fact that we have a whole long list of industries in the United States that are protected and a whole long list of industries that are not. Unfortunately, at the present time—as all of us are only too painfully aware—some of those unprotected industries are suffering very high rates of unemployment. At the same time, they find that they have strong foreign competition in the United States, but that they are not able to compete in other countries with tariff or primarily nontariff trade barriers.

This is certainly the experience of the American auto industry, particularly the parts and suppliers. They find that in Japan and elsewhere, there are all sorts of barriers that don't exist in this country.

I guess I come back to my original point. That is, are we free traders or are we not? Do we advance the goal that we all want to achieve by this inconsistent—what, it seems to me to be, at least, an inconsistent approach that we are taking?

Mr. MACDONALD. I hope it isn't inconsistent. This is a problem that does repeatedly arise. What happens when you are essentially free trade and you find that your trading partner is not? The $64 question is are you willing to retaliate or proceed to retaliation even though it may, to some degree, block off trade and further restrict the overall trading system?

I think to be credible, the answer to that question has to be yes.

Mr. BRODHEAD. I certainly would agree with that. Certainly that is the prevailing philosophy of our Defense Department, that we have the ability and people think that we will retaliate. Occasionally, we do.

But it seems to me that when it comes to trade, we seem to take a much softer approach. Things seem to go on for years and years and years. I recognize that the job of an ambassador, the job of a negotiator is a difficult one. These things are very time consuming. But what I want to impress upon you is that I think that there is a large segment of the American public that is losing patience. The concern about imports coming in, unfair competition in some instances, it is becoming more and more common for people to

become aware of the idea of the fact that our goods can't be sold abroad. At a time when there is high unemployment in the country, a great deal of dissatisfaction, this is just, it seems to me, a festering sore. I would hope this administration would step up its efforts in this regard to bring some of these decisions to the Congress, some recommendations to the Congress as to which way we ought to go to try to solve this problem.

I think that many of these barriers to American products would disappear if other countries thought that we really were going to do something about it, but they don't take our deterrent—we don't have a credible deterrent here. They don't really believe and they have no, it seems to me, real reason to believe we are going to do anything about it because we are being very patient negotiators; but I am suggesting to you that the house is on fire.

Mr. MACDONALD. Well, I would like to propose that H.R. 6773 is one significant step in the direction which you are pointing toward, to use your defense analogy. Let me say I don't believe you will find this to be unilateral. Our trading partners don't think we are. We have an unprecedented number of cases going, efforts being made in the GATT including a number of cases that have never gotten out of the starting block until 1981.

Mr. BRODHEAD. Well, we could go on and on. I want to thank you for your comments today.

Chairman GIBBONS. Mr. Conable?

Mr. CONABLE. I have a modest matter that is important in my neck of the woods up along the Canadian border. As you know, I cosponsored H.R. 5205 along with other members, mirror-image legislation. This was introduced at the request of the President and was designed to help resolve the border broadcast dispute with the Canadian Government. I am concerned that if the U.S. Government can't resolve a rather simple straightforward trade dispute involving a relatively small amount of money, it is rather hopeless to expect we will be able to resolve more complicated, more significant trade disputes.

I wonder what the administration plans to do to insure the Canadian border broadcast dispute gets resolved this year. I am sure you are totally familiar with this issue and understand the issue of reciprocity involved in it.

Mr. MACDONALD. Congressman Conable, the President is grateful to you and to your colleagues for cosponsoring the mirror-image legislation on behalf of the administration. As Ambassador Brock noted when he was testifying on companion legislation before the Senate Finance Committee, even if this issue is relatively insignificant in dollar terms, it is important for the United States to resolve this trade problem which is symptomatic of Canadian Government intervention in the market in a manner that is adverse to U.S. industry.

I can assure you the President is strongly committed to seeking enactment of this legislation this year. As he said in his message to Congress on November 17, it is imperative that the Government of Canada be made to realize the importance that the U.S. Government attaches to the resolution of this issue.

Mr. CONABLE. I am concerned, sir, that notwithstanding the bipartisan introduction of this mirror legislation, even assuming its

probable enactment, we still haven't seen any willingness on the part of Canada to negotiate a mutually satisfactory compromise. If we are going to finally resolve this problem, we may have to amend the mirror legislation to add some encouragement for the Canadians to negotiate a resolution of this issue. I would appreciate your reaction and your thoughts on the need to strengthen H.R. 5205 and what you think we might be able to do to give a little sharper teeth to it.

Mr. MACDONALD. I agree with you that we need to resolve this issue now. As you know, President Reagan in his message to Congress indicated the legislation by itself may not cause the Canadians to resolve the dispute. The President specifically retained the right to take further action if appropriate to obtain the elimination of the practice while expressing the hope that this further action would not be necessary.

I had hoped and Ambassador Brock had hoped that the enactment of the mirror bill would in itself cause the Canadians to eliminate their practice. In fact, we had hoped that by this time in the legislative process we would have seen some favorable indication from Canada of its willingness to resolve this issue. To date, we haven't seen that, and I have to share your pessimism over our ability to persuade the Canadians to resolve this dispute. Therefore, we feel that it is time to look at new ways to encourage the Canadian Government to deal with this problem.

We need to consider other options which would create an economic incentive for Canada to come to the negotiating table. I am concerned, though, that this issue not escalate into a trade war with Canada through an excessive retaliatory response on our part. That would neither be in our interest, nor in Canada's. But we believe that it is possible to take additional action without raising this danger.

Mr. CONABLE. Mr. Ambassador, I will be happy to work with you. I would love to get the issue resolved. It has been floating around for a long time and it is a particular irritant, and I think an unnecessary irritant in our relations. I regret that it has not been resolved. We have tried to be forthcoming on issues like the foreign convention tax deductibility in our dealings with the Canadians. We would like to be forthcoming on something of this sort, too.

But the grief is ours at this point, and mirror legislation may not be sufficiently equal in its impact on the other side of the border, to have the effect we want without putting some added inducements in the bill. I will be happy to work with you.

I, too, don't wish to have any trade warfare with the Canadians. That is not in our interest. We have a long history of amicable relations in economic as well as other areas. And it would be too bad if a small matter of this sort could further irritate what seems to be, well, a certain degree of mistrust on both sides of the commercial relationship.

Mr. MACDONALD. We will be up to see you, Congressman, as well as the chairman, on this issue.

Chairman GIBBONS. Mr. Frenzel?

Mr. FRENZEL. Yes. Is the problem, Mr. Ambassador, that the mirror bill provides more suffering on our side of the border than on Canada's?

Mr. MACDONALD. To tell you the truth, I am not sure, Congressman Frenzel. I wonder whether the problem is that the Canadian Government's assessment is that we really can't even pass the existing mirror bill, much less something that has additional teeth in it. This is something that we have to prove to our trading partners.

Mr. FRENZEL. I think the Canadian action was, of course, contrary to all the rules of decent behavior in international commercial relationships. On the other hand, if we want to pass something that bites to discourage it, I would prefer that it bite Canadians rather than Americans.

Thank you.

Chairman GIBBONS. Thank you, Mr. Macdonald.

Mr. MACDONALD. Thank you.

Chairman GIBBONS. Our next witness is Mr. Lionel H. Olmer, Under Secretary for International Trade, U.S. Department of Commerce.

Mr. Olmer.

STATEMENT OF HON. LIONEL H. OLMER, UNDER SECRETARY FOR INTERNATIONAL TRADE, U.S. DEPARTMENT OF COMMERCE

Mr. OLMER. Yes, sir. Thank you, Mr. Chairman, I appreciate the opportunity to be here again. I have a statement which I would like to submit for the record, and just a few brief remarks that I would like to make.

What the administration seeks is simply equity for U.S. business and nothing more. We believe that our pursuit of that objective can be furthered in at least three ways. First, we want to expand the areas covered by GATT rules. Second, we want to strengthen the President's authority to negotiate reductions in barriers which limit our commercial access to foreign markets which in some sector may involve tariff negotiations. Finally, we want to clarify the fact that the maintenance of barriers which deny fairness and equity for U.S. business may be a cause of action under U.S. unfair trade law. With respect to areas not adequately covered by GATT, I would only like to personally emphasize that the services and high technology areas are the fastest growing sectors in our economy, and I think in the world economy. Because of their dynamic character, we can expect to face an increasing array of distortive government policies in the years ahead in the absence of rules which will insure equity.

Finally, I would like to remark that the area of high technology is an area in which the United States has long been preeminent. Our preeminence in areas of high technology is in a period of decline. Not all of the reasons for that decline can be attributed to the absence of reciprocal treatment. But in my judgment, a good number of them can be related to that reason. And so if the Congress were to help strengthen the administration's tools to attain the overall objective of equitable market access, I believe we would have the opportunity to contribute to the restoration of American competitiveness in an area that is important to us, not only for our economic well-being, but for our national security as well.

I would like to respond to any questions you or your colleagues may have, sir.

[The prepared statement follows:]

STATEMENT OF LIONEL H. OLMER, UNDER SECRETARY OF COMMERCE FOR INTERNATIONAL TRADE

Mr. Chairman, thank you for the opportunity to appear once again before this Subcommittee to review the issue of assuring equitable market opportunities for U.S. business overseas and to comment on legislation aimed at addressing that problem.

The aggressive pursuit of equitable competitive opportunities and market access for U.S. industries is one of the key issues in our foreign economic policy today. Reciprocity, in the sense of a progressive and equitable opening of markets on a global scale, is a central goal of this Administration's trade policy.

We have attempted to identify those factors which serve as barriers to legitimate commercial opportunities in foreign markets for U.S. firms. We have sought to fashion a trade policy response which orients our bilateral and multilateral initiatives to convince our trading partners to recognize these obstacles and, more importantly, to work for their elimination.

We have made it clear that these obstacles cannot be ignored if the international trading system is to succeed. Some progress has been achieved, but the situation remains serious. We continue to support consideration of legislation which will strengthen our hand in dealing with our trading partners.

I would like to briefly review the problem.

For the past thirty years, the world trading system has operated under rules embodied in the General Agreement on Tariffs and Trade (GATT). We continue to support the basic premises of the GATT system. However, as successive trade negotiations have peeled away traditional trade problems, they have revealed deeper and more difficult obstacles to trade. Nations which have agreed to equitable tariff reductions have often simply raised more subtle nontariff barriers to protect particular sectors, which in turn serve to deny market access to others. National preferences for local products, industrial policies which foster or protect particular sectors, export credit subsidies, closed distribution channels, regional investment incentives, and hundreds of other devices have emerged which continue to distort the functioning of free markets.

Current GATT rules with respect to agriculture need to be improved in order to introduce discipline similar to that which applies to industrial products. Until such time as that is accomplished, the Unites States will continue to insist that all countries adhere to the existing rules, which unfortunately, I cannot say is the case today.

In addition, current international mechanisms either do not cover or are insufficient to provide adequate discipline in key areas of importance to United States commercial interests such as direct investment and trade in high technology products and services.

The high technology and services sectors are especially important to the current and future health of our economy. Together they account for a positive flow of $67 billion in our balance of payments. Our services industries, which constitute an ever increasing part of our economy, are often on the cutting edge of new technology. Our ability to maintain our competitive lead in both of these sectors will be affected by our ability to successfully retain our leadership position in each.

In recognition of this fact, the Cabinet Council on Commerce and Trade has commissioned a study to examine our competitiveness in high technology. It has preliminarily concluded that U.S. competitiveness in the high technology area has declined over the past two decades. A number of factors have contributed to this trend—high relative labor costs, declining relative R&D, and the high cost of capital borrowing. Another important reason for this relative decline is the fact that the governments of our major industrial competitors have intervened in the marketplace and have targeted critical technologies for assistance and development. This intervention has gone largely unchecked by current international trading rules. The Administration intends to develop a more detailed assessment of the domestic and international components of the high technology problem and their implications for U.S. policies.

The services sector represents more than half of our GNP and employs 50 million people—66 percent of non-farm private sector labor. In the past 10 years, world trade in services has grown by 17 percent a year and has created almost 18 million new jobs in the United States. Although data measuring trade in services is still not as accurate as that for goods, we estimate that U.S. exports of services are in excess

of $60 billion. And that does not include services sold internationally by companies which are primarily goods producers.

Despite the good track record of our services industries in this dynamic sector, increasing impediments abroad to the direct sales, establishment, and operation of these firms, threaten their continued success. In some service industries, subsidization by foreign governments threatens artificially to undermine U.S. competitiveness.

A growing number of countries are also resorting to investment policies which distort trade and capital flows. These interventionist policies impinge on the trade opportunities of other countries, including the U.S., promote the development of protected and inefficient industries, and reduce the contribution that foreign investment can make to global economic development.

The importance of this trend for the U.S. economy and our balance of payments can be illustrated by two statistics: in 1981, U.S. earnings from our companies' foreign investment totalled $31 billion; approximately one third of U.S. exports involved sales to affiliated companies abroad.

ADMINISTRATION INITIATIVES IN RESPONDING TO THIS PROBLEM

In response to the need for more equitable market access, the Administration has taken a number of multilateral and bilateral initiatives. In the multilateral area, we are pressing for agreement at the GATT Ministerial in November to address the areas of services, high technology, and investment. We must undertake a concerted effort with our major trading partners to assess ways in which multilateral disciplines can insure free and fair competition in these areas, as well as areas of more traditional concern to the GATT. We recognize that progress may be slow and we must approach these efforts with an enlightened self-interest. We must not shy away from the difficult task of focusing on our long-term interests in dealing with these problems in the GATT.

We have also held bilateral consultations with our major trading partners on the problems I have mentioned. For example, Commerce and USTR have recently agreed with the Japanese Ministry of International Trade and Industry to establish a bilateral working group on high technology. The working group will address issues such as the structure and trends in high technology industries, cooperative R&D, industry targeting, trade distorting barriers and access to capital markets for high technology industries.

ROLE OF STATUTORY PROPOSALS

The Administration agrees that legislation could play a positive role in our efforts by clarifying the tools available to the President and strengthening our hand in negotiating with our trading partners.

In so doing, we should not lose sight of our primary objective of gaining greater openness in the markets of other countries rather than closing our own markets. Maintaining our leadership position in pressing for greater trade liberalization means that we must search for responses which do not force us outside our obligations under the GATT or other international agreements.

A number of the bills currently before this Subcommittee reflect a positive approach to the problem. One bill which addresses the issue particularly well and which reflects the concerns of the Administration in a number of areas is H.R. 6773 introduced by Congressman Frenzel. I hope it will be given serious, early attention by this Subcommittee. Its mandate for negotiations in the areas of services, investment and high technology and its proposed amendments to Section 301 would strengthen the Administration's authority without the adoption of protectionist measures which would prove self-defeating in the long run.

In addition to clarifying important aspects of Section 301's application in the area of services and investment, H.R. 6773 identifies denial of fair and equitable market opportunities as a possible basis for action under Section 301. I believe that this language would enhance the effectiveness of Section 301 and would reinforce the importance we place on achieving greater equity in the international trading system.

In conclusion, Mr. Chairman, no single piece of legislation, nor any individual action by the Administration, will establish equity in the international trading system. A solution will require a broad commitment to the exercise of our existing rights under trade rules and a willingness on the part of all countries to engage in a responsible effort to improve, not abandon, those rules. I look forward to working with this Committee to develop legislation which will support the Administration in this effort.

Chairman GIBBONS. Before you do, I just want to say certainly all is not dark in the area of international trade. I can remember sitting here about 10 years ago, and I think international, our international exports were running at about the $2 billion-a-month mark. I think now they are running at about a $22 billion-a-month mark. Is that not right?

Mr. OLMER. Yes, sir.

Chairman GIBBONS. Of course imports are up because of the high price of oil. But our exports have gone up very rapidly. As I recall, our ultimate test of trade is our balance of payments, the current account. I have forgotten what it is on a day-to-day basis, but it is still pretty good, isn't it?

Mr. OLMER. Well, our current account looks pretty good, but it is a misleading indicator of our basic health. I say that because it includes such factors as earnings on overseas investment, and the like. It is not a measure of whether a given American corporation is able to compete because of the presence of equitable rules, or whether the basis on which that corporation is not competitive is because its goods suffer in quality, price or reliable service.

Chairman GIBBONS. Before I turn this over to Mr. Frenzel, maybe you could help me understand this. We seem to have most of our cases against our trading partners against the European Community. I am not sure whether that is correct or not. It seems that way. We have a tremendous surplus of about $15 million-plus a year with them. Yet on the other hand, we have a deficit with Japan. We don't seem to have many cases against the Japanese.

Can you explain why that is so?

Mr. OLMER. Well, it is true, first off, Mr. Chairman, that our surplus with the Europeans is roughly equal to our deficit with Japan. But trade balances do not determine equity. Our basis of many of the cases, the trade cases that we have against Europeans, stem, in my judgment from the clear evidence of identifiable unfair trade practices, particularly in the area of subsidization of old, outmoded and noncompetitive industries. The case in Japan is certainly different.

In the case of Japan what we see is the achievement of equity, basically, in tariffs, and even in the more visible nontariff barriers. We also have seen in the case of Japan a society which has developed super competitive capabilities, almost across the board, although not entirely, and a replacement of the traditional trade barriers by more invidious and hard to catch barriers that prevent our goods and services from entering. I think it is largely an evidentiary matter. It is just awfully hard to pin down.

Chairman GIBBONS. The whole process of target industries for domination by one nation leaves me worried. And I realize a nation moving away from a great war, and the dislocation that that war caused, may have to do that for a short period of time. But are the Japanese still targeting industries against us?

Mr. OLMER. Oh, I think they do not view that in any nefarious way. They view it as commonsense, and in their own enlightened self-interest. It just so happens that in a number of instances it has worked to the severe disadvantage of U.S. industry and workers. Of itself, of course, there is no reason why a nation should not develop an industrial policy if it so chooses. And as long as it adheres to

rules of fair trade, where such rules do exist, it is acceptable that it target for preeminence a particular industrial sector. By itself I don't have a quarrel with that.

Chairman GIBBONS. Do you think we ought to be targeting?

Mr. OLMER. Well, I think we have in the past. We oftentimes like to say that industrial policy is, per se, bad, and that we should not ever employ industrial policy. I think in some instances in our past, some successful instances, such as putting a man on the moon in 10 years, such as the development of an aerospace industry, we had a relatively clearcut notion of where we wanted to go and how we would best get there.

Chairman GIBBONS. Mr. Frenzel.

Mr. FRENZEL. Thank you very much, Mr. Secretary, for your testimony. I share with Mr. Gibbons the notion that with the exception of our need for energy from abroad, we have done pretty well in the international marketplace since the war, even in the last 10 years in which many people have found fault with our performance. If we except oil, we have a very strong plus balance of trade, do we not?

Mr. OLMER. Yes, sir.

Mr. FRENZEL. And we are strong in manufacturing. We have a plus balance of trade. As you indicated, in some industries that have benefited from industrial policies such as air frames, we have a strong positive balance, although we are a little nervous about that. So I don't think we need to look at the situation from a completely pessimistic point of view, except as you point out, we want to be sure that we get our fair share of world markets and we get people to open to us. We are talking about industrial policies, and your statement to Mr. Gibbons was that we don't want to interfere with another nation's industrial policy unless it produces subsidies or barriers; is that correct?

Mr. OLMER. Or other forms of unfair trade practices as identified in our laws.

Mr. FRENZEL. This isn't on the point, but I feel compelled to simply make a statement to which you need not respond. Our country is now involved in a systematic monitoring program of high technology exports. People who export have told me that our export enhancement is being substantially retarded by either monitoring of that program by people who don't understand the high technology business, or an over enthusiastic operation. But exports, particularly those going to Europe, are being worked over awfully hard.

I hope that somehow we get the administration of that program into such shape where it is not retarding normal, legal, correctly described shipments out of our country.

Mr. OLMER. I am familiar with the program to which you refer, Congressman Frenzel. And I agree with you that it needs and I am sure will undergo some refinement. But I feel constrained to say that the basic purpose for which that program has been implemented by the Treasury Department's Customs Service is a reason with which I believe most Americans would agree. And that is to prevent the systematic hemorrhaging of U.S. technology to adversaries and potential adversaries. If we were to calculate the net gain to the Soviets and the net cost to us of having to spend so

heavily of our treasury in a defense program, I think that the relative or the net cost to us would be minimal through the restraint on such trade.

But clearly the program can and will, I am sure, undergo refinement in the days ahead.

Mr. FRENZEL. Thank you. My quarrel is not with the purpose, it is with the equity issue.

Chairman GIBBONS. Mr. Bailey?

Mr. BAILEY. Mr. Chairman, thank you very much.

Mr. Olmer, I welcome you here. I see the genesis in much of your thinking of things that really concern me. One thing that caught my ear was your saying that you had no trouble at all with national industrial goals or purposes. And, in fact, you acknowledged the reality of those types of things in our history. You used the example of the space program. We might add to that, maybe, the Manhattan project and our subsequent involvement in the nuclear industry. Both would be some of the best examples of a role and function of government in some type of national goal or objective.

But I don't think you mean, at least I would assume that you don't mean, that as far as doing business in the international realm that when a country, let's say, then I am going to complicate this what question, a country, let's say, like Japan, for purpose of doing business, let's say develops a specific tax policy, a specific resource allocation or raw material policy within its country to aid a particular industry, let's say like steel—a perfectly good example.

You wouldn't say that given world trade, what comparative advantage means and the desirability, at least theoretically, of some sort of generally accepted definition of free enterprise within the meaning of comparative advantage, that that kind of practice is desirable. I assume that you would say that that is a distortion, that it leads to inefficient production of steel, at least potentially it could, and therefore is not desirable.

Would I be correct?

Mr. OLMER. Yes, sir, you would.

Mr. BAILEY. All right. If that is so, let's take an overlay and look at one thing that didn't get into this thing. Generally speaking in this Nation's history when we have set major national goals of an industrial type, generally speaking now, and I respect your knowledge of this area, they have been tied to military goals and objectives issue, isn't that the case?

Mr. OLMER. Yes.

Mr. BAILEY. Let's talk about that then. We do have laws on the books that, and in terms of Japan by the way, in light of some of the recent cases that have developed and come to light on the west coast, the Japanese apparently are a little more adept at using more than simply nontariff barriers in the way to do business here in the United States in terms of getting their orders and doing their dumping.

They are obviously quite good at other practices as well. Very, very successful at it. How would you suggest we deal with it? We have got bills on reciprocity now that are responding to a public outcry of outrage in terms of we don't do business the same way there as we do here. We need some common definition of doing business.

The typewriter cases are maybe good examples. We have a different definition of antitrust here, do we not?

Mr. OLMER. Yes.

Mr. BAILEY. We have a different definition here in the United States of antitrust. Yet that definition makes our laws, our courts, our procedures available to foreign entities that want to market in the United States of America. Yet some of those same discovery techniques and some of those same legal vehicles are not available to an American or German firm or French firm or Italian firm or Mexican firm that wants to sell in Japan. What do you do about that? What does reciprocity respond to in dealing with that kind of a situation?

Mr. OLMER. I don't think the reciprocity legislation with which I am familiar with is going to go very far toward solving that problem.

Mr. BAILEY. I don't either. What would you suggest? I don't think it will either. What do you suggest? Is that a fair question? Maybe you haven't—I don't know. What should we do? What could we do?

Mr. OLMER. Well, I think one of the things that we are trying to do presently with respect to high technolgy is to have a better, more sharply defined understanding among ourselves, and between ourselves and our major trading partners, as to what is involved, and as to why it is in the best interests of all parties to participate in a regime which is more open than has been the case in the past.

In terms of specific application of our laws, either our antidumping laws or our antitrust laws, or our rules of discovery for the acquisition of evidence necessary to prove——

Mr. BAILEY. That is one of the major problems. Right.

Mr. OLMER. I don't see any solution to that.

Mr. BAILEY. You don't see any way we could enforce or encourage changes in those systems, particularly in Japan, to make that type of remedy available? See, I don't see how we can do much. I don't think we are going to win a jawboning war with the Japanese. I have confidence in you folks, you understand. I know you know where you are coming from.

Mr. OLMER. I would say with respect to the acquisition of evidence, we have just gone through some of the—well, not some, the most complicated set of antidumping and countervailing duty trade cases in our history in the steel industry. And we have used the laws presently on our books to acquire evidence from the Europeans and from the Japanese and from South Africa, Spain, Romania, a variety of other countries. Almost without exception we have had excellent cooperation.

Mr. BAILEY. I think it is getting better.

Mr. OLMER. Well, the reason for that, I have to think, is that it is not merely a desire to adhere to some abstract definition of U.S. law but clearly the enlightened self-interest that says in the absence of providing such information my market is going to be foreclosed because the American administrator, to wit, the Commerce Department, will use the best evidence available. And that may well be a newspaper report or an assertion from——

Mr. BAILEY. But I am going to take you back to one of the original things you said when I proposed my very leading proposition with which you agreed. The ideal situation would be for a private

party to be able to enter Japanese courts, for example, or have legal channels available to them in the private sector. Because what you are really talking about is a huge amount of Government involvement and Government pressure to make these things go. That is really what you are saying. That is really not ideal at all. In fact, you make so doggone much money that, by the time the thing comes to fruition, a lot of times people really don't care. That is the trouble with it.

Mr. OLMER. Certainly. You have some difficulty distinguishing between national treatment, meaning equal application of domestic law wherever that domestic law is applied, and reciprocal treatment. In this respect, I don't mean reciprocity should be interpreted as suggesting application of U.S. antitrust law in Japan.

Mr. BAILEY. No; I know you didn't. I was using it as an example of how two systems, one which is extremely open and which provides a great deal of access, particularly for legal redress, and is in effect, as a practical matter, victimized. I think that is what has happened to us. You obviously——

Mr. OLMER. To an extent it has.

Mr. BAILEY. You obviously agree with that.

Mr. OLMER. Yes.

Mr. BAILEY. I am very thankful to my chairman who is very gracious with me on time, but I would ask you to comment on two things. On top of page 4 you have a number of factors that have contributed to this trend. This is from your statement. How relative labor costs, on which we would probably disagree, declining relative R&D which we definitely would agree, and the high cost of capital borrowing have contributed to this trend.

On labor costs, that is something which we largely view, NLRB jurisdiction aside, as existing in the province of the private sector, at least for us. But, on decline relative R&D, what role do you think the Government ought to play? Should we be using our tax structure to encourage resource diversions into that area more than we are?

The Japanese have announced plans to do it. They are specifically going to do it. In 10 years they have vowed and determined that they are going to be net technology exporters. And, they are getting into it in a big way. And the high cost of capital borrowing. Now, if that doesn't involve what I believe should be the creative use of the tax goals to achieve some goals, then I don't know what should. I can't separate a nation with the military responsibilities that the United States of America has from the need to have a vehicle industry, the need to have a steel industry, the need to have some capacity in glass; things that we are, I fear, going to lose.

What role should the Government play in solving that high cost of capital borrowing problem? That is really where the Japanese have directed resources and directed capital through a number of different techniques into the building of those mills or in setting those industrial policies. What should we do? Should we do more with the Export-Import Bank?

Should we let it hover there as a threat or offset to another nation that says if you buy Japanese, if you buy turbines from Hitachi for this geothermal project or for this utility, just because the interest rate is going to be third or half of what the Americans can

offer, you know, we can't do anything about it here because we don't—we can't compete on the interest level.

What would you do? What should Government do?

Mr. OLMER. I would be happy to try to respond to that, Congressman Bailey, if you let me come back and respond on the issue of labor cost.

Mr. BAILEY. Tell you what, you do labor costs last, because I know we are going to disagree on that. But give me your thing on the other two. I am curious.

Mr. OLMER. The question of high cost of capital existed as a problem between us and Japan well before interest rates in the United States rose to the levels they were when President Reagan took office, much less what they are today. They arose because of the different nature of our two systems. I am not sure I have an answer to that problem. It, in part, would relate to the issue of export financing. I am happy to announce that that is an issue we are looking at, very, very carefully, right now.

Mr. BAILEY. Yes; that is the area where I was——

Mr. OLMER. The Cabinet Council on Commerce and Trade has undertaken at the direction of the Cabinet Council an interagency study looking for new and perhaps creative ways to use dollars in support of U.S. exports. I hope within a very short period of time, perhaps a month, 6 weeks, to have a paper prepared on which the Cabinet Council will vote.

Mr. BAILEY. Would you send me a copy of that?

Mr. OLMER. I would be happy to. I am sure we will be here asking for your views on what ought to go into it. On the other side of the coin, however, the question of availability of capital, not merely to support exports, but availability of capital to start new industries, that is another issue.

Mr. BAILEY. Yes.

Mr. OLMER. It is an issue that I don't have a good answer to. Clearly, it is because of an industrial policy——

Mr. BAILEY. Do you support the investment tax credit?

Mr. OLMER. Absolutely; sure.

Mr. BAILEY. And accelerated depreciation?

Mr. OLMER. Absolutely.

Mr. BAILEY. I am glad to hear you disagree with the Senate tax bill.

Mr. OLMER. And I think we may need to go further in some respects.

Mr. BAILEY. I am glad to hear that. I think this country has to wake up, I am sad to say. You know, I don't like to interfere at all out there, but I think it is unrealistic as heck to think you can deal in a modern world without making some tough choices. The ideals and the roles are different. I am glad to hear you say that.

Mr. OLMER. As to labor costs, which is my nickel, I am sure you are aware that the average steelworker in the United States gets 90 percent more than the average worker in manufacturing in the United States, and that the differential between the U.S. steelworker and the European steelworker is roughly 25 percent. And in Europe it is a severely outmoded operation where they are clearly noncompetitive.

Mr. BAILEY. Let me tell you what my answer to that is, because the same complaints have been leveled at the automobile industry, and they go this way: All things being equal, as far as I am concerned, at least, we, I think, are going through a debate in this country with the present administration that has very correctly put its finger on some real problems in our country's economy. We are developing a new definition of the role and function of Government. You know, what we allow it to do, what its nature of involvement is, use of our tax code and our regulatory system, a New Federalism, all these different things. It is very imaginative, et cetera.

But I think the collective bargaining area is a private sector one. I am perfectly confident that the unions, in whom I happen to believe very strongly, can work in that area with management as efficiently and I think respond to any crisis as any group of people can anywhere in the world. And I believe that. A lot of people don't have that faith, but I do.

But what I don't like is when the Government steps in, and this is what happens, I fear, in Japan so much. And they really get involved in distortions, through the use of planning, to an extent that we may have to do to some degree, more than we may like, just to compete; just to maintain those national military goals and national economic goals that we are going to need. And I don't have too much of a problem with that because I will tell you, the Japanese people are going to wake up, too, and someday somebody is going to be sick and tired of saying to the 55-year-old worker that you are out on your behind, or that you don't have rights of security. You don't have safety things, either, because I happen to believe the unions are right in pursuing those things.

So, when the wage issue and the benefit package issue come into play, that is something that the unions can sit down and fight and solve, too. But I don't know; talks about "no strike" agreements. Yet, that right to strike is very, very important. Unions have negotiated that away and sat down with management and done that. But what we should be talking about is the way the Government has jawboned the industry to death over the years.

Jeez, I have a little tape. I can hear the speech that J. F. K. made about Roger Blough. You know they wanted to charge $6 more a ton. I mean, you remember that whole confrontation. That has been in every—every political science student studies it. I guess I disagree with you in the labor area.

Mr. OLMER. I am not arguing for Government intervention in labor negotiations at all, and the opportunity for doing great things is now upon the U.S. steel industry because they are engaged in bargaining for a new contract.

Mr. BAILEY. Also, an opportunity to do some great things rests upon this administration with countervailing duty, antidumping, time to develop some real good laws that are going to deal with downstream dumping. Time to jawbone some of our friends over their defense responsibilities and the role their industries play and how they market. Time not to head into that agreement out on the west coast for a lousy $11 million settlement on 100 million dollars' worth of ripoffs in those Japanese cases maybe to teach some lessons out there. You guys in on that?

Mr. OLMER. Well, I have done—no. Absolutely not.

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Mr. BAILEY. Just wish you could do something about it; I did not mean it in a negative sense.

Mr. OLMER. Mr. Chairman, I may have misled you a few minutes ago, and in thinking about it in the intervening moments I recall that the actual statistics regarding trade actions that are presently outstanding throughout the world against foreign exporters to the United States would reveal that there are three times as many, between two and three times as many antidumping and countervailing duty orders applicable against Japanese exporters as against anyone else, or all others combined.

Mr. BAILEY. You say there are more against the Japanese?

Mr. OLMER. More. Between two and three times as many. So we are not leaving them out.

Mr. BAILEY. Thank you for being so kind with me on time, Mr. Chairman.

Chairman GIBBONS. Thank you, Mr. Olmer.

Next we have a panel from the Chamber of Commerce, Mr. William D. Eberle; Business Roundtable, Mr. Charles Levy; Emergency Committee for American Trade, Mr. Merlin E. Nelson, chairman, AMF, Inc.; and National Association of Manufacturers, Mr. Robert McLellan.

I would say it to all the witnesses, we are glad to see you back here. Many of you have been here before, particularly to Bill Eberle who has had such responsible positions in trade in this Government.

Mr. Eberle, would you lead off, please.

STATEMENT OF WILLIAM D. EBERLE, CHAMBER OF COMMERCE OF THE UNITED STATES, CHAIRMAN, TASK FORCE ON MULTILATERAL TRADE NEGOTIATIONS

Mr. EBERLE. Mr. Chairman, thank you.

I am happy to be here on behalf of the U.S. Chamber and we appreciate the opportunity to testify. As you suggested I would like to file our statement for the record, make a few general observations, and then address specific comments on the bills themselves.

Chairman GIBBONS. Yes.

[The prepared statement follows:]

STATEMENT OF W. D. EBERLE, CHAMBER OF COMMERCE OF THE UNITED STATES

I am W. D. Eberle, President, Manchester Associates, Ltd., and chairman of the Task Force on Multilateral Trade Negotiations of the U.S. Chamber of Commerce. Accompanying me is Howard Weisberg, the Chamber's director for international trade policy. The Chamber appreciates the opportunity to testify on the generic problems of market access, the adequacy of current law, and what the future course of U.S. policy should be, and to support H.R. 6773 and H.R. 5383. H.R. 6773 is intended to achieve equity and fairness of commercial opportunities, particularly market access. The purpose of H.R. 5383 is to give trade negotiating priority to service sector issues and to clarify the coverage of existing trade laws to better deal with service trade problems.

INTRODUCTION

Congress faces a formidable challenge in guiding U.S. trade policy today. In the face of recession and tough international competition, an alarmingly large number of countries have succumbed to pressures to give their domestic industries an artificial advantage by limiting imports or subsidizing exports. While we have not been completely successful in resisting these pressures, the record of the United States to

date has been exemplary, compared to many of our trading partners. As a result, serious inequities in market access exist.

With unemployment at record, post-Depression levels, angry and frustrated voices have appealed to Congress to "right" the balance by imposing "reciprocal" U.S. trade restrictions. If other nations indulge in protectionism, they ask, why shouldn't we?

Certainly there is cause for concern. There is no question that some U.S. industries face fierce competition from imports while obstacles block their attempts to penetrate the foreign markets from which these imports originate. It sometimes looks like a one-way street. While this situation appears to characterize our trade with a number of countries, attention is currently focused predominantly on Japan, where formidable barriers frustrate U.S. exporters and investors. No responsible member of the international trade system can limit access to its market while maintaining large trade surpluses with its major trade partners.

The problem confronting us is how to protect the rights of U.S. traders and investors in the international marketplace without undermining the international trade system. Put another way, how can we assure that U.S. traders and investors have the degree of access to foreign markets due them under existing international commitments and how can we further expand trade and investment opportunities? It is these questions that the various bills before the Subcommittee address.

It is incumbent upon us all, while recognizing that problems exist, to define them correctly and keep them in proper perspective before attempting to legislate solutions. Our testimony today will try to provide that perspective, as well as evaluate the pending bills.

H.R. 6773

Where our trading partners fail to live up to their commitments, we must assert our rights. Where the internal characteristics of their economies, their domestic economic policies, or their cultural biases frustrate the objectives of the agreements we have negotiated, we must go back to the bargaining table. Our government must take up the cause of industries and individual companies when other countries do not play by the internationally accepted rules of the game. We must also consider whether new international agreements, covering as yet unregulated areas of economic activity, are necessary to advance our interests.

The U.S. Chamber has in the past maintained that new legislation is not needed to address inequities in market access, believing that the executive branch already has tools sufficient to enforce U.S. trade rights and to secure equivalent market access for U.S. products, services, and investment. The most comprehensive is Section 301 of the Trade Act of 1974, as amended.

Apparently, however, others are not as certain as we are of the adequacy of Section 301 for responding to unreasonable and unjustifiable foreign government actions against not only the merchandise trade of the United States but also U.S. service industries and actions concerning aspects of U.S. foreign investments which are related to trade. Therefore, in the interest of assuring that the scope of Section 301 is fully comprehended, the U.S. Chamber can support legislation which clarifies its coverage. Mr. Frenzel's bill, H.R. 6773, does this without running afoul of any of our international commitments.

The U.S. Chamber has also maintained that, were the executive branch to utilize its Section 301 authority more vigorously, including increasing self-initiation of cases, whenever a serious problem comes to its attention, several objectives could be accomplished, including: (a) political and legal pressure on an offending government to end its unfair trade practices by the mere initiation of a case; (b) "encouragement" of a favorable response by a foreign government by the threat of retailiatory actions; (c) reinforcement in the eyes of the world of the commitment of the U.S. government to secure for U.S. concerns equivalent market access by the actual implementation of retaliatory action; (d) reduction of protectionist pressures upon the Congress; and (e) demonstration to the private sector that the government intends to enforce U.S. trade laws fully, thereby encouraging more businesses to make known their particular trade problems. The fact that foreign barriers persist despite Section 301 seems to have led to the conclusion that this law is inadequate to meet its objectives. We submit that the inadequacy is one of implementation and not of authority.

While we do not believe that the Congress should mandate that Section 301 be used in every instance of alleged unfair trade practice, we do feel that it is appropriate for the Congress to signal its concern about the underutilization of this authority. H.R. 6773 does this in a manner consistent with our international commitments.

The two sections of H.R. 6773 dealing with trade in services and high technology trade might be better addressed in separate pieces of legislation, but we have no objection to their inclusion in an omnibus trade bill.

While Mr. Frenzel's earlier H.R. 5596 also has some merit, H.R. 6773 has the benefit of having been developed in consultation with both the Administration and the business community. The U.S. Chamber will support H.R. 6773 so long as it remains free of any amendments which are protectionist in nature or which undermine U.S. international commitments.

Unlike the Senate counterpart (S. 2094) of this legislation, H.R. 6773 does not contain special tariff-negotiating authority limited to high technology products. We endorse the deletion of the authority in H.R. 6773. Like Mr. Frenzel, we believe that tariff-cutting authority should not be enacted on a sectoral or product-by-product basis, but should be broadly based.

H.R. 5383

American service industries encounter a formidable array of barriers both in developing and industrial countries. In spite of the diversity of the services sector, many of the obstacles faced are the same. In addition, barriers are looming over some of the new, heretofore unrestricted and high potential service activities, such as information transmittal, electronic communication, and transborder data flows. Also, in certain service areas where international arrangements once protected international commerce—for example, in the acquisition and protection of industrial property rights—traditional protections are eroding.

U.S. trade law with respect to services is incomplete. While residual reform is not required, the following revisions or clarifications are needed:

A clear congressional directive to the President to seek agreement in service trade as a principal objective under Section 102 of the Trade Act of 1974, as amended, would prevent services from being virtually ignored in any future negotiations as they were during the past Tokyo round.

While we feel that barriers to establishment of U.S. service enterprises in foreign countries are within the realm of "barriers to international trade" as the term is used in Section 102, arguments have been made that establishment-related issues involve investment, not trade, and, therefore, are not covered. Thus, legislative clarification is in order.

Consultation by U.S. negotiators with private advisory committees while negotiating objectives are being developed is necessary.

State regulators should be a part of any negotiations dealing with services they regulate. The U.S. Trade Representative (USTR) should consult with the states before the U.S. sets its negotiating strategies or decides on methods of implementation.

The USTR should, through the Trade Policy Committee and its subcommittees, have the lead responsibility and the authority necessary for involving federal departments and agencies, including independent regulatory agencies, in service trade policy formulation and negotiation. The relationship between the regulatory agencies and USTR is essentially consultative and USTR should not have authority to dictate regulatory decisions.

Federal departments and agencies responsible for service sector activity including its regulation in the U.S. should advise the USTR of pending matters involving: (1) the treatment accorded United States service sector interests in foreign markets, or (2) allegations of unfair practices by foreign governments or enterprises in a service sector and proposed disposition of such matters. While openness of foreign country markets should be a consideration in agency decision-making, we do not support sectoral or mirror-image reciprocity in U.S. regulatory proceedings or in services trade. Therefore, we suggest that Section 8 be deleted from H.R. 5383.

The Secretary of Commerce should be authorized to establish a service industries development program designed to promote U.S. service exports and to collect and analyze appropriate data.

Because of some question about its scope, Section 301 should be amended to expressly include foreign suppliers in the U.S. market.

While we believe that Section 301 is fully intended to address subsidies and unfair pricing in the service sector, in practice questions have been raised about executive branch willingness to apply this authority in such cases. Clarification of Section 301 may be needed to resolve this situation.

Because Mr. Gibbons' H.R. 5383 adequately addresses these needs, with the deletion of Section 8, the U.S. Chamber supports this legislation.

THE IMPORTANCE OF WORKING WITHIN THE SYSTEM

The United States must continue to work within the existing system of trading rules. Our responsibility, which is born out of our selfish national interest, is to build upon and strengthen those rules, not to undermine and possibly destroy them.

It is fashionable in some circles these days to belittle the effectiveness of international rules in protecting U.S. interests. It is common to hear criticisms that other countries engage in wholesale violations of GATT and that the GATT is irrelevant to the new kinds of foreign trade barriers and distortions confronting U.S. exporters. While such generalizations exaggerate the actual state of affairs, there are significant elements of truth in them. That truth is no justifications for our resort to similar practices, however.

The notion that retaliation beyond the scope of what is legitimately sanctioned by GATT in the solution to our international trade problems derives ultimately from the belief that our trading partners have more to lose than do we from a contraction of trade brought about by spiraling restrictions. That suggestion has always been an irresponsible one but never more so than today when almost one fifth of our gross national product is accounted for by imports and exports, when U.S. service companies and high technology firms are such strong and successful international competitors, and when U.S. foreign direct investment (which is so thoroughly integrated into the trading system) has grown so large. We, in fact, have much to lose by adopting a high-risk trade policy that may undermine the international trading system.

The tremendous expansion in world commerce that has occurred since the GATT came into force has been a major stimulus to global economic growth and welfare and to our own economy. Certainly, the revolutions in communications and transportation can be claimed to have played a major role in this expansion, as has the growth in national economies themselves (although the growth in world trade has almost always consistently out-paced domestic economic growth). However, it cannot be denied that an equally important factor has been the guidelines constraining national policy embodied in the GATT and other trade rules, creating a business environment much more conducive to expanding trade than had existed before. By substituting unilateral decision-making contrary to GATT for the deliberate (and admittedly sometimes frustrating) process of multilateral consultation and adjudication of disagreements, and by encouraging others to do the same, we risk destroying the stability and predictability upon which the continued growth of trade depends.

Moreover, very often in our well justified criticism of the foreign trade barriers faced by U.S. exporters, we sometimes forget that we ourselves are not pure. Some of our trading partners may deem our own restrictions on trade to be legitimate grounds for invoking the principle of reciprocity to close off markets now open to our most competitive industries.

The GATT clearly has shortcomings. As an agreement among sovereign states it necessarily reflects compromises with which no one country is completely satisfied. The alternative to it, unilateral decisionmaking, is ultimately a prescription for chaos. We are not, however, faced with a choice of accepting the rules as they are throwing them out. The institution and rules of GATT have and can be renegotiated to deal with the new challenges to open trade, and the United States has a major role to play in moving this process forward. It is to that end that our imagination and energy should be directed.

CONCLUSIONS

The U.S. Chamber supports H.R. 6773 and H.R. 5383 (either as an independent bill or as a part of an omnibus trade bill). We believe that both will clarify any ambiguities in current law, as well as send the appropriate signals to both the executive branch and our trading partners.

For those who believe stronger legislation is necessary, we can only stress the importance of maintaining the international trading system. If the United States does not take the lead here, who else is economically strong enough to do so? The system needs reform, but it must come through negotiated evolution and not collapse.

The debate surrounding these legislative proposals is being carefully watched by our trading partners. They are beginning to understand the seriousness with which we take existing inequities in market access. H.R. 6773 and H.R. 5383 will be taken as a clear indication of the United States' determination to correct those inequities. At the same time, however, these bills demonstrate the unwavering commitment of the United States to maintaining its leadership role for open and fair world trade.

Mr. EBERLE. Mr. Chairman, the chamber has viewed many of the so-called reciprocity bills that have been introduced with great skepticism and great concern.

Since members of our chamber are both exporters and compete with imports, we are well aware of the existing inequities market access. And we believe that is the key trade problem today. This problem is not new. But it is being aggravated by the recession. Our tolerance of it is justifiably growing thin.

Since I do not believe there is much dispute about the nature of the problem, I would like to concentrate my comments on how we should go about solving it. One of the things we must keep in mind, however, that there is a domestic component of our larger trade problem. Ambassador Brock has identified it: While there are serious barriers to our exports, an even larger problem has been the poor performance of our own economy, in terms of both inflation and productivity, and in terms of export effort.

I will focus, though, only on the issue of barriers to our exports, rather than on the problems of our internal economy. First of all, our skepticism over reciprocity legislation concerns its implication of potentially closing our markets. That may make us feel good, or even benefit a particular narrow segment of industry or labor. But we would pay a very high price for embarking on such policies. Protectionism would lead to inefficiency in our industry, higher prices, more inflation and waste, and counterretaliation. The notion that our trading partners have more to lose than we do in a trade war is highly dubious. Although one might argue the notion is theoretically correct, when you have 20 percent of your economy tied to imports and exports, the harm to our economy would be enormous.

We believe that American business can in fact compete around the world. What we really want—from Congress and the executive branch—is to have more opportunities to compete. Although there will be ups and downs, on the whole, by opening up markets, the United States will be better off.

A final general comment I would like to make, is that it has been—and remains—our view that the failure of the U.S. Government to aggressively enforce our rights stems not from a lack of legislative authority, but rather from a lack of will. We are now persuaded, however, that legislation to clarify the coverage of section 301, if that will give more authority in the eyes of certain parties and signal Congress concern over the lack of full use of existing authority, is appropriate although we do not believe it is entirely necessary.

Addressing first House bill 6773, we support it. We believe that H.R. 6773 successfully walks the line between clarification of the coverage of 301, while not contravening our international commitments. Unlike its counterpart in Senate 2094, this bill does not contain any special tariff negotiating authority limited to high-technology products. We endorse this omission, because we believe tariff cutting authority should not be enacted on a narrow sectoral basis, but should be broadly based.

We believe the trade in service and high-technology sections of the bill might better be addressed in separate legislation but we do not object to their inclusion in this omnibus trade bill. We are

somewhat concerned, however, that by focusing special attention on discreet sectors, Congress may send a signal to our trading partners that we are not as concerned about some of our other important, competitive industries. We would therefore like to see an addition to the bill, perhaps in the statement of purposes, to make sure that covers all of our industries, and no emphasis on any particular industry.

Moving to H.R. 5383, with the exception of section 8, we support this bill. U.S. trade law with respect to services is incomplete, and needs to be brought on a par with policy already in place dealing with trade in goods. We believe H.R. 5383 achieves this objective.

With respect to section 8, however, we believe USTR should have the lead responsibility and authority, involving Federal departments and agencies, including the independent regulatory agencies, in services trade policy formation. We believe that only the President has the ability to look at the overall situation relative to our trade policy.

Fundamentally, Mr. Chairman, we support the policy underpinnings of both these bills. While insisting on U.S. rights, they both operate within the framework of international trading commitments we have developed over the last 40 years. The debate surrounding these legislative proposals is being carefully watched by our trading partners. They are beginning to understand the seriousness with which we take existing inequities in market access.

H.R. 6773 and H.R. 5383 will be taken as a clear indication of the U.S. determination to correct these inequities. At the same time, however, these bills demonstrate the unwaivering commitment of the United States to maintain its leadership role for open and fair world trade.

Let me close, if I may, Mr. Chairman, with two other comments which relate only in part to these bills. I have recently returned from the annual Japan-United States Businessmen's Conference. I would like to convey some observations based on 3 days of talks between the business leaders of two countries. First, in their communique, both sides agreed that the most important single factor that has our bilateral relationship out of balance is the dollar-yen misalinement. Both sides also agreed that the United States must get its interest rates down, and that Japan must allow the yen to become a full international currency. The exchange rate between our currencies must more realistically reflect the underlying fundamentals of our two economies.

Second, Mr. Chairman, while we in the United States have rightly put great emphasis upon Prime Minister Suzuki's extroardinary statement that accompanied Japan's most recent market liberalization package—his calling upon government, business, and the public to welcome foreign manufactured goods and investment—we need to follow through to see that that commitment is carried out fully.

We must be vigilant. I think by doing so, it will help our relationship. Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you, Mr. Eberle.

The next witness is Mr. Charles Levy.

STATEMENT OF CHARLES S. LEVY, THE BUSINESS ROUNDTABLE, TASK FORCE ON INTERNATIONAL TRADE AND INVESTMENT

Mr. LEVY. Thank you, Mr. Chairman.

I am pleased to be here today in my capacity as counsel to the Business Roundtable Task Force on International Trade and Investment. My comments will include general principles as well as a number of specific legislative proposals.

Serious questions are being raised concerning the effectiveness of traditional U.S. trade and investment policies in a period of changing economic realities. The international economic system is being increasingly challenged. The very success of GATT in promoting a reduction of tariffs, the traditional protectionist measure, has spawned an even more complex and troublesome set of obstacles in the form of nontariff barriers and export subsidies. Such Government interventions are distorting both trade and investment patterns. They are sometimes hard to identify, their measurement is elusive and negotiations aimed at their reduction or elimination are difficult.

Yet, we cannot ignore nontariff barriers and export subsidies since they have cost our economy business and jobs. Justifiably, they have raised the ire of the American public, which has demanded that its Government do something.

Presently, a prevailing response in the United States to these serious issues has been to embrace the concept of reciprocity as a means of reducing foreign trade and investment barriers and thereby improve our access to foreign markets. Reduction of trade barriers on a reciprocal basis is not a new concept for U.S. foreign economic policy. But as articulated by some, the concept of reciprocity in 1982 differs in definition, approach and application from its traditional application.

The concept of strict reciprocity has become politically popular. The policy is aggressive and is directed toward foreign targets, particularly the Japanese. While its stated purpose is to compel the opening of foreign markets, many view it as a means to protect the U.S. market against foreign competition.

But strict reciprocity is a high-risk policy. Its application in a retaliatory manner could backfire and close foreign markets which are now open to our most competitive industries.

The Business Roundtable is concerned that an improper use of reciprocity could worsen, instead of improve, our economic vitality. If misapplied, the concept has the potential of further undermining an already vulnerable multilateral trading system by triggering retaliation. Any short-term advantages which may accrue from the threat and use of retaliatory measures will serve only to destabilize the international trade and investment climate to our eventual detriment.

However, barriers still exist in the international marketplace and it is appropriate for the United States to take a new look at international trade and investment rules. In this regard, the United States must reevaluate the adequacy of existing U.S. trade laws which give the President the ability to respond to unjustifiable, unreasonable and discriminatory foreign trade and investment practices.

The Business Roundtable has formulated a set of general principles upon which the policy debate about foreign barriers to U.S. exports and investment should proceed. The principles are included in the attached statement on reciprocity and trade. They include among the following:

New legislation should authorize only those unilateral actions which are consistent with our international obligations.

In those areas which are not adequately covered by existing U.S. laws, new legislation must promote efforts to obtain multilateral solutions and support U.S. foreign investment and exports.

New legislation should not implement restrictive and retaliatory notions of reciprocity which will undermine reciprocity as a forward looking approach to opening foreign markets through negotiation.

Trade legislation should not be enforced by independent Federal agencies without provision for adequate supervision and control by the President.

These principles are supplemented by a set of specific legislative proposals, a copy of which is also attached. Our recommendations would amend present trade law, giving it more teeth where needed without infringing on our broader commitment to a constructive multilateral trade and investment policy.

Our proposals include the following:

The President should be given additional remedial authority under section 301.

The scope of section 301 should be expanded to cover explicitly investment and service sector trade.

Section 301 should include national interest conditions and limitations on the exercise of retaliatory action.

A cause of action should not be created under section 301 which would be based on denial of "substantially equivalent commercial opportunities" or "reciprocal market access."

The President should be given a specific negotiating mandate with respect to foreign investment, services and high technology.

A service sector program should be developed for the collection of data needed for formulating service industry negotiating strategies and objectives.

It is against these standards that the Business Roundtable has and will weigh proposed legislation. Business Roundtable has applied these guidelines to the Reciprocal Trade and Investment Act of 1982, S. 2094, and has endorsed it. H.R. 6773, introduced recently by Congressman Frenzel, is essentially identical to S. 2094, and the Business Roundtable supports it. We believe, however, there is room for improvement.

Specifically, we would like to see this committee add to H.R. 6773 an amendment similar to section 3(c) of H.R. 5596, which was introduced earlier this year by Congressman Frenzel.

The elements of such an amendment, which provides for certain checks on the President's section 301 authority, are as follows:

Remedies under section 301 should take into account the obligations of the United States under applicable international agreements.

In deciding to take action under section 301, the President should be required to take into account the impact of the action on the

national economy and the international economic interests of the United States.

The President should also be required to conduct a review of each action under section 301, on not less than a biennial basis, in order to determine its effectiveness, and whether continuation of such action is in the national interest.

Finally, the President should be required to rescind an action taken by him under section 301 if: (1) he determines that continuation of the action is not in the national interest; or (2) the offending act, policy, or practice is eliminated by the foreign country.

This amendment recognizes that negotiation is the most effective remedy for resolving international economic problems and expanding foreign markets. At the same time, the President must have authority to take affirmative action in the event negotiations fail. However, the imposition of restrictions on foreign imports, services or investment always risks provoking escalating retaliation. The risks increase if there is a need to impose restrictions on products, services or investments not involved in the original action under section 301. Such risks must be accepted if the President is to have the wide range of responses necessary to enhance his negotiating leverage. But to minimize these risks, the President's authority should be carefully circumscribed to protect the national interest. The only present limitation on the President's authority to take retaliatory action under section 301 is that such action be "appropriate." Given the significant consequences of retaliatory action, this is not an adequate check on Presidential authority.

In conclusion, I would like to turn back to an earlier theme in my testimony. American businessmen, American workers, and the American public are angry. So are American policymakers. The anger is directed at those nations that have erected barriers to trade and investment, while simultaneously flooding the United States and other countries with their goods.

This mood has had a positive impact on the U.S. policymaking process because it has clearly prompted a spirited debate on the adequacy of U.S. trade laws and the multilateral economic system to deal with perceived inequities in our trading and investment relationships. Such attention to our trade and investment problems is long overdue, and the Business Roundtable welcomes it. The challenge, as I indicated above, is to pass legislation to open world markets. Punitive restrictions will not lead to the best results. We are committed to cooperating with you to develop workable solutions to the thorny problems you are confronting.

Thank you, Mr. Chairman.

[The prepared statement and additional material follow:]

STATEMENT OF CHARLES S. LEVY, COUNSEL, BUSINESS ROUNDTABLE TASK FORCE ON INTERNATIONAL TRADE AND INVESTMENT

I am Charles S. Levy, a partner in the law firm of Meyer, Brown & Platt. I am pleased to be here today in my capacity as counsel to the Business Roundtable Task Force on International Trade and Investment. The Business Roundtable consists of almost 200 companies, nearly all of which have substantial international operations.

The Business Roundtable welcomes the Subcommittee's hearings on reciprocal trade and market access legislation. This hearing and the legislation pending before the Congress recognize that international economic policy issues are critical to the health of the U.S. economy as well as to U.S. foreign policy. My remarks today will

include general policy statements concerning the concept of reciprocity as well as a number of specific legislative recommendations.

The international economic policies of the United States historically have sought to expand trade and investment. They have been generally successful.

Our commitment to multilateral, non-discriminatory reduction of trade barriers and mutually acceptable trade and investment rules are key elements of U.S. policy. The commitment was designed to prevent a recurrence of the destructive, retaliatory trade policies of the 1930's. It has fostered a multilateral system of negotiations that reduced trade barriers and, in turn, allowed an unprecedented expansion of trade and improved U.S. and world prosperity.

But serious questions are being raised concerning the effectiveness of traditional U.S. trade and investment policies in a period of changing economic realities. The international economic system is being increasingly challenged. The very success of GATT in promoting a reduction of tariffs, the traditional protectionist measure, has spawned an even more complex and troublesome set of obstacles in the form of non-tariff barriers and export subsidies. Such government interventions are distorting both trade and investment patterns. They are sometimes hard to identify, their measurement is elusive and negotiations aimed at their reduction or elimination are difficult.

Yet, we cannot ignore non-tariff barriers and export subsidies since they have cost our economy business and jobs. Justifiably, they have raised the ire of the American public, which has demanded that its government do something.

Presently, a prevailing response in the United States to these serious issues has been to embrace the concept of "reciprocity" as a means of reducing foreign trade and investment barriers and thereby improve our access to foreign markets. Reduction of trade barriers on a reciprocal basis is not a new concept for U.S. foreign economic policy. But as articulated by some, the concept of reciprocity in 1982 differs in definition, approach and application from its traditional application.

The concept of strict reciprocity has become politically popular. The policy is aggressive and is directed toward foreign targets, particularly the Japanese. While its stated purpose is to compel the opening of foreign markets, many view it as a means to protect the U.S. market against foreign competition.

But strict reciprocity is a high risk policy. Its application in a retaliatory manner could backfire and close foreign markets which are now open to our most competitive industries.

The Business Roundtable is concerned that an improper use of reciprocity could worsen, instead of improve, our economic vitality. If misapplied, the concept has the potential of further undermining an already vulnerable multilateral trading system by triggering retaliation. Any short-term advantages which may accrue from the threat and use of retaliatory measures will serve only to destabilize the international trade and investment climate to our eventual detriment.

However, barriers still exist in the international marketplace and it is appropriate for the United States to take a new look at international trade and investment rules. In this regard, the United States must reevaluate the adequacy of existing U.S. trade laws which give the President the ability to respond to unjustifiable, unreasonable and discriminatory foreign trade and investment practices. When they are inadequate, we should correct the deficiency. But we must not allow solutions to bilateral problems, which deserve serious attention, to weaken the foundations on which our success as a trading nation have been built.

Thus, it is imperative that any new legislation which invokes the concept of reciprocity be a step forward and not a step backward toward protectionism. The Business Roundtable wants trade and investment legislation to stimulate the U.S. economy. But the legislation must do so constructively by expanding world trade and investment rather than by restricting the U.S. market or demanding strict "reciprocity" in trade and investment.

The Business Roundtable has formulated a set of general principles upon which the policy debate about foreign barriers to U.S. exports and investment should proceed. The principles are included in the attached statement on reciprocity in trade. They are as follows:

First, no change in U.S. trade laws should be effected unless there is convincing evidence of a need for such change.

Second, new legislation should authorize only those unilateral actions which are consistent with our international obligations under the GATT and other agreements.

Third, in those areas which are not adequately covered by existing U.S. laws, new legislation must promote efforts to obtain multilateral solutions and support United States foreign investment and exports.

Fourth, new legislation should not implement restrictive and retaliatory notions of reciprocity which will undermine reciprocity as a forward-looking approach to opening foreign markets through negotiation.

Fifth, trade legislation should not be enforced by independent federal agencies without provision for adequate supervision and control by the President.

These principles are supplemented by a set of specific legislative proposals, a copy of which is also attached. Our recommendations would amend present trade law, giving it more teeth where needed without infringing on our broader commitment to a constructive multilateral trade and investment policy. Our proposals include the following:

The President should be given additional remedial authority under Section 301.

The scope of Section 301 should be expanded to cover explicitly investment and service sector trade.

Section 301 should include national interest conditions and limitations on the exercise of retaliatory action.

A cause of action should not be created under Section 301 which would be based on denial of "substantially equivalent commercial opportunities" of "reciprocal market access."

The Executive Branch should be required to analyze and report on foreign barriers to market access.

The President should be given a specific negotiating mandate with respect to foreign investment, services and high technology.

A service sector program should be developed for the collection of data needed for formulating service industry negotiating strategies and objectives.

A fair share of existing export promotion programs should be allocated to service industries.

An intergovernmental task force should be established to provide a framework for consultation between the Federal and State governments on developing appropriate procedures to ensure expedited implementation of trade agreements in those areas subject to State regulation.

Independent agencies should not be permitted to consider foreign practices in their licensing procedures, nor to restrict foreign investment or imports on the basis of denial of equal access.

It is against these standards that the Business Roundtable has and will weigh proposed legislation. The Business Roundtable has applied these guidelines to the Reciprocal Trade and Investment Act of 1982 (S. 2094). We believe that S. 2094 is consistent with the fundamental principles of U.S. foreign trade and investment policies. It reenforces the commitment of the United States to the enforcement of legal remedies against unfair trade and investment policies. It emphasizes the reduction of barriers to trade and investment through negotiation as opposed to using the concept of retaliatory reciprocity. Therefore, in a recent letter to Senator Danforth, the Business Roundtable has endorsed the passage of S. 2094.

H.R. 6773, introduced recently by Congressman Frenzel, is essentially idential to S. 2094 and the Business Roundtable supports it. We believe, however, there is room for improvement. Specifically, we would like to see this Committee add to H.R. 6773 an amendmnt similar to Section 3(c) of H.R. 5596, which was introduced earlier this year by Congressmen Frenzel, Jones of Oklahoma, Conable, Vander Jagt and Railsback. The elements of such an amendment, which provides for certain checks on the President's Section 301 authority, are as follows:

Remedies under Section 301 should take into account the obligations of the United States under applicable international agreements.

In deciding to take action under Section 301, the President should be required to take into account the impact of the action on the national economy and the international economic interests of the United States.

The President should be required to conduct a review (on not less than a biennial basis) of each action taken under Section 301 in order to determine its effectiveness and whether continuation of such action is in the national interest.

The President should be required to rescind an action taken by him under Section 301 if: (1) he determines that continuation of the action is not in the national interest; or (2) the offending act, policy, or practice is eliminated by the foreign country.

This amendment recognizes that negotiation is the most effective remedy for resolving international economic problems and expanding foreign markets. At the same time, the President must have authority to take affirmative action in the event negotiations fail. However, the imposition of restrictions on foreign imports, services or investment always risks provoking escalating retaliation. The risks increase if there is a need to impose restrictions on products, services or investments not involved in the original action under Section 301. Such risks must be accepted if

the President is to have the wide range of responses necessary to enhance his negotiating leverage. But to minimize these risks, the President's authority should be carefully circumscribed to protect the national interest. The only present limitation on the President's authority to take retaliatory action under Section 301 is that such action be "appropriate." Given the significant consequences of retaliatory action, this is not an adequate check on Presidential authority.

In conclusion, I would like to turn back to an earlier theme in my testimony. American businessmen, American workers and the American public are angry. So are American policymakers. The anger is directed at those nations that have erected barriers to trade and investment, while simultaneously flooding the United States and other countries with their goods.

This mood has had a positive impact on the U.S. policymaking process because it has clearly prompted a spirited debate on the adequacy of U.S. trade laws and the multilateral economic system to deal with perceived inequities in our trading and investment relationships. Such attention to our trade and investment problems is long overdue, and the Business Roundtable welcomes it. The challenge, as I indicated above, is to pass legislation to open world markets. Punitive restrictions will not lead to the best results. We are committed to cooperating with you to develop workable solutions to the thorny problems you are confronting.

Statement of the Business Roundtable Task Force on International Trade and Investment

INTRODUCTION

The international economic policies of the United States historically have sought to expand trade and investment. They have been generally successful.

International institutions, like the General Agreement on Tariffs and Trade (GATT), with its emphasis on multilateral, non-discriminatory reduction of trade barriers, seek mutually acceptable rules and are key elements of U.S. policy. GATT was designed to prevent a recurrence of the destructive, retaliatory trade policies of the 1930's. The commitment to a multilateral system of negotiations has led to reduced trade barriers which, in turn, allowed an unprecedented expansion of trade and improved U.S. and world prosperity.

But serious questions are being raised concerning the effectiveness of traditional U.S. trade and investment policies in a period of changing economic realities. The international trading system is being increasingly challenged. The trend of the last two decades for governments to try to handle a variety of domestic economic problems through unilateral restrictions on imports and to stimulate exports through government subsidies has grown more pronounced. Such government interventions are distorting both trade and investment patterns.

The very success of GATT in promoting reduction of tariffs, the traditional protectionist measure, has spawned an even more complex and troublesome set of obstacles in the form of nontariff barriers and subsidies. They are sometimes hard to identify, their measurement is elusive and negotiations aimed at their reduction or elimination are difficult.

The United States has identified many such barriers in our international economic relationships. Canada's FIRA and the failure of Japan to open its market to highly competitive U.S. products exemplify the problems causing frustration in the United States. They have cost our economy business and jobs. Justifiably, they have raised the ire of the American public, which has demanded that its government do something to offset or combat the trend.

Presently, a prevailing response in the United States to these serious issues has been to embrace the concept of "reciprocity" as a means of reducing foreign trade and investment barriers and thereby improve our access to foreign markets. Reduction of trade barriers on a reciprocal basis is not a new concept for U.S. foreign economic policy. But as articulated by some in recent speeahes and legislative proposals, the concept of reciprocity in 1982 differs in definition, approach and application from our traditional understanding of reciprocity.

The Business Roundtable Task Force on International Trade and Investment is concerned that an improper use of reciprocity could worsen, instead of improve, our economic vitality. If misapplied, the concept has the potential of further undermining an already vulnerable multilateral trading system by triggering retaliation. As happened in the 1930's, the shortterm advantages which may accrue from the threat and use of retaliatory measures will serve only to destabilize international trade and investment.

At this critical time, the Task Force urges the United States to assert the political will and leadership needed to preserve and strengthen the multilateral trading system. This includes reevaluation of the adequacy of existing U.S. trade laws which give the President and ability to respond to unjustifiable, unreasonable and discriminatory foreign trade and investment practices. When they are inadequate, we should correct the deficiency. But we should not allow solutions to bilateral problems, which deserve serious attention, to weaken the foundations on which our success as a trading nation have been built. That is a potential problem in the "reciprocity" debate, as we see it unfolding.

It is within this context that this statement undertakes to formulate a set of general principles upon which the policy debate about foreign barriers to U.S. exports and investment should proceed. These principles reflect a clarification of the meaning of "reciprocity" in its historical context and the problems inherent in the application of reciprocity to non-tariff barriers.

GENERAL PRINCIPLES

The concept of reciprocity has become politically popular. The policy is aggessive and is directed toward foreign targets, particularly the Japanese. while its stated purpose is to compel the opening of foreign markets, many view it as a means to protect the U.S. market against foreign competition.

But reciprocity is a high risk policy. Its application in a retaliatory manner could well backfire and close-off foreign markets which are now open to our most competitive industries. Thus it is incombent on U.S. policymakers to assure that any new legislation which invokes the concept of reciprocity is a step forward and not a step backward toward protectionism.

We do not mean to imply that no new legislation is needed to deal with the problems we confront. Rather, any legislative response must provide for flexibility, recognize our international obligations, take into account our commitment to strengthening and broadening the GATT, and truly promote the expansion of international markets and not their contraction.

The Business Roundtable Task Force on International Trade and Investment believes the following principles must guide the debate about enactment of reciprocity legislation.

First, a change in U.S. trade laws should not be effected unless there is convincing evidence of a need for such change. Bilateral balance of payments deficits do not conclusively establish such a need. Our trade deficit with Japan is unacceptable, but it results, at least in part, from the present undervaluation of the yen and overvaluation of the dollar. At the same time the United States is reflecting a trade imbalance with Japan, we enjoy a substantial trade surplus with the Common Market and LDSs.

We need also to evaluate whether our problem is political rather than procedural. There are a number of areas where it is clear that Japan has violated its GATT obligations. Yet, the U.S. has generally chosen to resolve these problems through bilateral consultations and negotiations rather than to enforce our rights through the consultation and dispute settlement mechanisms, of the GATT. Before we pursue new legislative remedies, we must be sure we are making appropriate use of those already at our disposal.

At least some of our problems are of our own making. Existing laws and practices self-impose barriers to U.S. exports and foreign investment. We have not done enough legislatively to promote U.S. foreign trade. Positive legislation which removes export disincentives and provides useful export incentives may be more effective in enhancing our international reputation and competitiveness than new punitive reciprocity legislation.

Second, new legislation should authorize only those unilateral actions which are consistent with our international obligations under the GATT and other agreements. We should not enact legislation that violates the GATT. The strength of the multilateral trading system lies in GATT's consultation and dispute settlement procedures. These procedures permit countries that feel damaged by the practices of others to bring complaints with the expectation that something will happen: a change in the practice, a dismissal of the complaint, a compromise solution or permission for the complainant to retaliate unilaterally if its case is valid and the offender will not change the illegal practice. The Tokyo Round improved those procedures substantially and they deserve to be tested. Legislation which would substitute unilateral action for dispute resolution procedures presently available under the GATT is premature.

Third, in those areas which are not adequately covered by existing U.S. trade laws, new legislation must promote efforts to obtain multilateral solutions and support United States foreign investment and exports. Investment and services are not presently covered by GATT and are not covered adequately by existing U.S. trade laws. We need new laws which encourage bilateral negotiations with countries imposing barriers to U.S. investment and exports, and, at the same time, enable us to work within the GATT or other multilateral institutions to expand their coverage and effectiveness. On the other hand, new laws enacted in frustration as a quick unilateral response to particular foreign restrictions on U.S. investment and service exports may be more harmful than helpful.

Foreign investment and export of services are two areas in which the United States has a decided comparative advantage, in spite of the existence of foreign barriers. We do not want new reciprocity legislation to backfire and add to these restrictions. Carefully defined authority in these areas may help offset foreign barriers to U.S. investment and services exports. Broad and unguided authority may trigger foreign retaliation against the very sectors where the United States is most competitive and therefore most vulnerable.

Fourth, new legislation should not implement restrictive and retaliatory notions of reciprocity which will undermine reciprocity as a forward-looking approach to opening foreign markets through negotiation. Unlimited authority to take unilateral action which retroactively denies access to the U.S. market is contrary to reciprocity's forward-looking emphasis. Any new legislation must be consistent with our traditional notion and application of reciprocity.

In a related matter, because of misuse and misapplication, the words "reciprocal" and "reciprocity" have come to be identified, rightly or wrongly, with retaliation and protectionism and should perhaps be banished from the debate. It is unfortunate that words which reflect decades of constructive and forward-looking U.S. trade policies have fallen into disrepute. Yet, this development may be a constructive catalyst. It forces us to define more precisely what the concept means and how it should be applied. This will help our trading partners understand more clearly the goals we are striving for.

Several legislative proposals use the phrase "substantially equivalent commercial opportunities" in describing equitable market access. This is a good starting point. The phrase is similar to that used in Sections 104 and 126 of the Trade Act of 1974 and broadly defines a goal to be achieved in the overall trading relationship between two countries given the special economic circumstances of each. It also recognizes the pitfalls of performance-oriented tests, such as focusing on bilateral balances of trade, or of trying to achieve exact equal treatment on a sector-by-sector or product-by-product basis.

Fifth, trade legislation should not be enforced by independent federal agencies without provision for adequate supervision and control by the President. Independent agencies may, under certain circumstances, have a constructive role in assessing the impact of foreign trade and investment barriers on matters within their regulatory jurisdiction. However, these agencies should not be given authority or required to develop and implement U.S. foreign trade and investment policies independently.

A particular agency may have the best understanding of the domestic business it regulates, but it will not have a broad understanding of U.S. foreign economic policy. It will not be cognizant of all the foreign policy and national security implications of trade actions. Such institutional deficiencies could lead to unjustified decisions or actions which violate U.S. international obligations and undermine ongoing bilateral or multilateral negotiations.

Independent agencies also are limited in their scope of authority to specific sectors. A unilateral decision by an independent agency to offset foreign barriers in one sector could trigger foreign retaliation in a sector more important to the economic interest of the United States as a whole. Mirror image legislation which would require a particular agency to take retaliatory action in response to a foreign trade or investment restriction compounds the problem by precluding consideration of other factors which necessarily bear upon any trade or investment decision. Any legislation must place trade decisions clearly in the control of the President, the State Department and the relevant trade agencies (the United States Trade Representative and the Department of Commerce), to avoid the danger of serving narrow interests at the expense of broader ones.

RECIPROCITY: ITS HISTORICAL PERSPECTIVE

Reciprocity is not a new principle of U.S. foreign economic policy. Reduction of trade barriers on a reciprocal basis has been a basic tenet of our policy since the

Reciprocal Trade Agreements Act of 1934.[1] In the post-war period, the GATT, with its express provision in Article XXVIII for negotiations on a "reciprocal and mutually advantageous basis," has provided the framework for the major trading nations to make comparable reductions in trade barriers multilaterally. Yet, a precise definition of reciprocity is nowhere to be found.

Similarly, the concept of reciprocity is well entrenched in U.S. trade law, but is not defined. Although the concept was the basis of the Reciprocal Trade Agreements Act of 1934, the term "reciprocity" is not used in that statute.

In drafting the Trade Expansion Act of 1962, Congress was apparently aware of the negotiating problems of trying to define reciprocity and avoided any explicit reference to the term. Instead, the Congress used the vague phrase "affording mutual trade benefits."[2]

In evaluating the Kennedy Round of negotiations, the U.S. Special Trade Representative articulated a more comprehensive, but still vague definition:

"[I]n the course of the negotiations, numerous other factors were considered in evaluating the balance of concessions—the height of duties, the characteristics of individual products, demand and supply elasticities, and the size and nature of markets, including the reduction in the disadvantage to U.S. exports achieved through reductions in the tariffs applied to the exports of the United States. . . ."[3]

In the Trade Act of 1974, Congress attempted to refine the concept of reciprocity by calling for "competitive opportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in U.S. markets to the importation of like or similar products. . . ."[4] In adopting this formulation of reciprocity, Congress clearly indicated it was not demanding strict equality of market access. The Senate Report noted that:

"The requirement for achieving equivalence of competitive opportunities within sectors *does not require equal* tariff and non-tariff barriers for each narrowly defined product within a sector, *but overall equal* competitive opportunities within a sector."[5]

Congress recognized the advantage of overall equivalence, as opposed to strict equality, is that it permits one country to lower its barriers on one product in return for another country lowering its barriers on a different product. Reciprocity is achieved in the sense that a better overall balance exists between trading partners.

In contrast, some present day advocates emphasize that reciprocity requires trade concessions to be made on a quid pro quo basis. This is contrary to the historical application of reciprocity as a forward-looking concept. The term reciprocity has traditionally been considered synonymous with "unconditional most-favored-nation treatment" (MFN)— an extension of privileges or a reduction of tariffs to one country must apply to all eligible countries. Conditional MFN, in contrast, provides MFN treatment to a country only so long as it meets its bilateral obligations.

The United States has generally favored unconditional MFN as a foundation of its trade policy. There have been exceptions to this approach—notably, the disastrous experiment under the Smoot-Hawley Tariff Act of 1930—but the United States has found through experience that the unconditional MFN approach provides the soundest basis for meaningful trade negotiations. This approach is codified in the Reciprocal Trade Agreements Act of 1934 and the Trade Expansion Act of 1962.

Unconditional MFN became U.S. policy, because the United States found that conditional MFN, with its emphasis on bilateral special arrangements, created frictions and market disruptions and thus outweighed its usefulness as a device to end discrimination against U.S. products. The U.S. Tariff Commission's 1919 report on "Reciprocity and Commercial Treaties," noted the problem:

"[A] policy of special arrangements, such as the U.S. has followed in recent decades leads to troublesome complication. . . . When each country with which we negotiate is treated by itself, and separate arrangements are made with the expectation that they shall be applicable individually, claims are nonetheless made by other states with whom such arrangements have not been made. Concessions are asked; they are sometimes refused; counter concessions are proposed; reprisal and retaliation are suggested; unpleasant controversies and sometimes international friction result."

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[1] U.S.C. § 1351 et seq.

[2] 19 U.S.C. § 1801.

[3] U.S. Office of Special Representative for Trade Negotiations, "Report on United States Negotiations" (1967), Vol. 1, p. iii.

[4] 19 U.S.C. § 2114(a).

[5] S. Rep. No. 93-1298, 93rd Cong., 2d Sess., 79 (emphasis added).

In the post-war period, the U.S. commitment to unconditional MFN was reinforced when, after its destructive flirtation with protectionism in the 1930's, the United States became a leading member of GATT. Under Article I of the GATT, all contracting parties agree to apply unconditional MFN treatment to one another.

Our unconditional MFN policy was modified to a limited extent in the Trade Act of 1974. The Act authorizes the President, if necessary to restore equivalent competitive opportunities with respect to certain major industrial countries, to recommend to Congress "(1) legislation providing for the termination or denial of the benefits of concessions of trade agreements entered into under [the 1974 Act] . . . and (2) that any legislation necessary to carry out any trade agreements under [the 1974 Act] shall not apply to such country." [6]

The 1974 Act makes it clear, however, that the President is to use this authority only if a major industrial country has not made concessions under trade agreements which provide "substantially equivalent competitive opportunities for the commerce of the United States." [7] The authority is not punitive; it may be invoked only to refuse a particular country the benefit of new concessions we are prepared to grant to a third country under the 1974 Act, but not to serve the special interests of the United States or to threaten retroactive loss of access to U.S. markets.

Similarly, the United States implements the Government Procurement Code on a conditional MFN basis. Section 301 of the Trade Agreements Act of 1979 authorizes the President to extend benefits under the Code only to countries which provide "appropriate reciprocal competitive government procurement opportunities to United States products and suppliers".[8] Again, the statute is forward looking. It refuses to grant new concessions; it does not threaten to deny concessions previously granted; and it is based on a multilateral agreement as opposed to unilateral action outside of the GATT framework.

As is the case in U.S. trade law, GATT does not contain a precise definition of reciprocity. GATT Article XXVIII merely states that negotiations should be on a "reciprocal and mutually advantageous basis".

In GATT, reciprocity has been employed primarily in the area of tariff reductions. Originally, GATT negotiators tried to measure reciprocity in terms of "trade coverage". They determined the annual volume of imports to each country within the tariff classification at issue and attempted to achieve equal reductions of duties. This proved time-consuming and unworkable. No clear picture of reciprocity emerged since the method of measuring relative concessions ignored the depth of cuts and thus was subject to much dispute. Only when the sixth round of MTN negotiations (Kennedy Round) abandoned this methodology in favor of a simpler 50 percent across-the-board-tariff reduction were meaningful results achieved. Reciprocal concessions were achievable only when it was realized that exact reciprocity was unworkable.

The point of this analysis is that the concept of reciprocity—under both U.S. law and GATT—has traditionally been applied in a forward-looking manner for the purpose of opening up markets. It has not been used as a device by which to exact concessions on a *quid pro quo* basis or demand strict equality of market access.

The variety of reciprocity now being advocated by some appears to veer sharply from what reciprocity has meant historically. Its thrust is more protectionist and retaliatory. The new reciprocity emphasizes unilateral enforcement, rather than bilateral or multilateral cooperation based on mutually acceptable rules.

The new reciprocity rests on the dual assumptions that (1) trade and investment opportunities offered by the United States to other countries have been greater than the opportunities we have been afforded, and (2) our enforcement tools are inadequate to correct the imbalance. Its focus appears to be on closing U.S. markets to any country which does not afford U.S. businesses exactly equal opportunities in particular market sectors, rather than on achieving equivalent trade concessions across a broad spectrum of products and sectors. The proposals promote conditional MFN treatment not as a means of assessing the performance of our trading partners under negotiated multilateral and bilateral agreements, but as a substitute for those agreements. In these respects, the new reciprocity means something vastly different from the reciprocity which has served as a cornerstone of American foreign trade policy in the past fifty years.

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[6] 19 U.S.C. §2136(c). It is important to note that in agreeing on this language the Congress specificially rejected a proposal to apply conditional MFN to "any trade agreement."

[7] 19 U.S.C.A. § 2136(b).

[8] 19 U.S.C. § 2511(b)(1).

PROBLEMS IN APPLYING RECIPROCITY TO NON-TARIFF BARRIERS

Errors in Measurement: The Equality Straitjacket. U.S. Senator Robert Dole recently wrote that reciprocity "means that other countries should provide us with trade and investment opportunities equal not simply to what they afford their other most-favored trading partners but equal to what we afford them." The objective of open markets for U.S. goods, investments and services is laudable, but experience—like the early GATT efforts to reduce tariffs—has shown us that precise equal treatment is difficult, if not impossible, to attain.

These problems are multiplied today because we are dealing mostly with non-tariff barriers which are far more difficult to identify and quantify than tariff barriers. An insistence on exactly equal concessions will not work because the form, application and effect of non-tariff barriers are so varied. Moreover, an insistence on equal concessions may not be to our advantage. The United States, with its comparatively open markets, would enter negotiations with less to concede.

The U.S. policy should be flexible enough to allow it to vary its approach depending on the identity of the country with which it is negotiating. For example, the U.S. might be less insistent upon obtaining equal treatment from developing countries whose efforts to protect their infant industries may be justified, than from an industrialized trading partner whose non-tariff barriers are designed to obtain unjustified trade advantages.

In short, exact equal treatment may be too rigid a policy. It could prevent the United States from obtaining concessions it needs and force us to give concessions we do not want to give. Our goal should be to open markets and we should not put ourselves in a straightjacket which restricts our movement in that direction. Particularly, a straightjacket that defies measurement.

Reciprocity Is a Two-Way Street. The goal of reciprocity is to open markets, not to close them. Some proponents of reciprocity legislation assert that a greater threat of unilateral action by the United States will help achieve that goal.

That position carries risks which must not be minimized. First and foremost is the possibility of retaliation. Faced with unilateral action by the United States, our trading partners may take unilateral action of their own which would not necessarily be confined to the product or industry which is the subject of our action. In assessing the present situation, it must be kept in mind that the United States is a major net exporter of services (approximately $60 billion), agricultural goods (over $43 billion) and our foreign direct investment, about $213.5 billion, is triple that of foreign companies in the United States. We are not invulnerable.

Nor, as U.S. Trade Representative William Brock said in Davos, Switzerland last month, is the United States "completely pure". Our laws protect domestic chemical, textile and certain agricultural products, among others. If a restrictive and retaliatory concept of reciprocity finds its way into U.S. trade policy, we can expect our trading partners to act similarly. The process would be degenerative, and markets could contract while the international economic community seeks the lowest common denominator.

Reciprocity, if applied narrowly, could also interfere with U.S. laws and policies affecting business which, though operating as barriers to trade, promote legitimate public policy. For example, the Glass-Steagall Act prohibits any bank, whether U.S.- or foreign-owned, from underwriting securities in the United States. At the same time, the International Banking Act and Regulation K permit foreign branches of U.S. banks to underwrite securities abroad. This puts them on a comparable competitive footing with foreign competitiors. Should we regard it as a legitimate manifestion of reciprocity for the Common Market to withdraw underwriting privileges from U.S. banks in Europe, unless the United States permits European banks to underwrite securities in the United States? The question, of course, is rhetorical and is posed only to point out that we cannot legitimately expect other countries to afford us the exact investment opportunities we afford them without appreciating that we are not always in a position to reciprocate.

Our Commitment to GATT. Commitment to the new reciprocity could lead to actions inconsistent with our GATT obligations. GATT Article I assures unconditional most-favored-nation treatment to all signatories. Legislation which would deny MFN treatment to a GATT signatory who refused to provide the United States particular trade concessions would violate that provision. It is not a satisfactory response to say simply that GATT is commonly violated.

The Task Force has urged the U.S. to redouble its efforts to strengthen the GATT. The GATT has inherent deficiencies. For example, Japan's refusal to permit self-certification of imported automobiles is clearly a non-tariff barrier of the most pre-

clusive kind, but it accords with the GATT because it applies to all countries without discrimination.

Many trade barriers presently in force among GATT signatories, such as a number of the quotas maintained by Japan, do not accord with the GATT. Yet, the United States has not challenged those barriers under the GATT's consultation and dispute settlement procedures. We cannot accuse the GATT of not working if we have not tested its effectiveness as a political or legal instrument.

Enactment of legislation which could lead to a violation of the GATT by the United States will have a symbolic and practical impact. We must make sure that the laws we enact and the actions we take do not adversely affect U.S. foreign investments and exports, or preclude or chill efforts to work within the framework of the GATT and to extend it.

Mirror Image Legislation. Narrow legislation which would mirror restrictive trade practices imposed by other countries or which would authorize or require a particular federal agency to make a specific retaliatory response to such restrictive trade practices present special problems. By their nature they are sectoral and reflexive and deny the United States the flexibility of accepting trade restrictions in one sector in return for concessions in other sectors.

Second, mirror image legislation fails to take into consideration the problem of national treatment. U.S. laws affecting foreign investment in many areas are among the least restrictive, but in the areas of antitrust, securities and banking, to name three, this country's laws and regulations are much more stringent than those of many of our trading partners. We must recognize that we cannot expect the laws of other countries to parallel our own.

Third, laws which entrust enforcement of reciprocity principles to independent agencies lose sight of the fact that international trade policies do not always lend themselves to a sectoral or product-by-product approach and are often inseparable from foreign and national security policy.

A CONCLUDING COMMENT

American businessmen, American workers and the American public are angry. So are American policymakers. The anger is directed at those nations—most importantly Japan—that are identified as having erected barriers to trade and investment, while simultaneously flooding the United States and other countries with their goods.

The mood has a positive impact on the U.S. policymaking process because it has clearly prompted a spirited debate on the adequacy of U.S. trade laws and the multilateral economic system to deal with perceived inequities in our trading and investment relationships. Such attention to our trade and investment problems is long overdue, and the Business Roundtable welcomes it.

The Task Force recognizes that new legislation may be needed. To the extent it is, we urge its commitment to the general principles enunciated above. The Task Force is undertaking its own review and analysis of individual legislative proposals that have been made.

Business Roundtable Task Force on International Trade and Investment: Legislative Proposals

I. PROPOSED AMENDMENTS TO SECTION 301 OF THE TRADE ACT OF 1974

A. *Issue.*—Should a new cause of action be created which would be based on denial of "substantially equivalent commercial opportunities" or "reciprocal market access"?

BR Position.—There is no need to create such a cause of action. It may, however, be appropriate to indicate either in the findings and purposes of legislation or in any accompanying committee reports that these concepts are among the factors to be considered in assessing whether foreign countries are fulfilling their trade commitments. By contrast, the concept of "denial of market access" may, in some form, be an appropriate basis for a Section 301 cause of action. Such a provision would emphasize the growing concern in the United States over foreign restrictions on trade and investment.

Rationale.—"Substantially equivalent market access" or "reciprocal market access" should not, for several reasons, become a separate cause of action in the context of an enforcement statute.

First, and most significant, a cause of action based on these concepts would be restrict rather than expand the scope of Section 301. As presently drafted, Section 301 requires only an allegation that a foreign action "(A) is inconsistent with the

provisions of, or otherwise denies benefits to the United States under, any trade agreement, or (B) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce." If a reciprocity element is added, the United States would also be required to demonstrate that it offers reciprocal market access. This may not always be the case. Thus, if the United States tries to break into a particular market sector in which it has imposed import or investment restrictions, the concept could be used as an affirmative defense by a foreign government.

Second, a new cause of action based on "substantially equivalent commercial opportunities" would be superfluous. The problem of market access is already covered adequately in Section 301. In those areas covered by multilateral or bilateral agreements, the President has authority under Section 301(a)(1) "to enforce the rights of the United States under any trade agreement," and under Section 301(a)(2)(A) to respond to any action which is "inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement." In those areas not covered by multilateral or bilateral agreements, denial of competitive opportunities is actionable under Section 301(a)(2)(B) if it is "unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce" 19 U.S.C. § 2411.

Finally, reciprocity is essentially a negotiating concept, used as a means of assessing the benefits of multilateral or bilateral agreements. See, *e.g.*, Sections 104 and 126 of the Trade Act of 1974 (19 U.S.C. § 2114(a) and § 2136(c)). Reciprocity is a dangerous concept on which to base a cause of action. It could lead to unilateral denial of access to our market—which may, in turn, trigger retaliatory action.

B. *Issue.*—Should the President be given additional remedial authority under Section 301, and if so, under what circumstance should it be exercised?

BR Position.—The primary remedy under Section 301 should be either bilateral or multilateral negotiations.

As explained more fully below in Sections III.B. and IV.A., Section 301 should be expanded to give the President explicit authority with respect to both service sector trade and investment.

In the event negotiations fail in those areas covered by GATT or other international trade agreements, remedies should take into account the obligations of the United States under the applicable international agreement.

In the event negotiations fail in areas not covered by the GATT or other international agreements, the President should have authority to impose fees or restrictions on foreign investment. The President already has authority under Section 301(b) to impose duties or other import restrictions on products and to impose fees or restrictions on services.

The President should have the authority (1) to take action on a nondiscriminatory basis against the products, services or investment of the foreign country involved, or (2) to take action affecting products, services or investments other than those (or their equivalents) involved in the Section 301 investigation, if actions with respect to such products, services or investments (or their equivalents) would be ineffective or inappropriate.

In the event that the President decides to exercise such "cross-over" authority, he must afford an opportunity to be heard to both foreign and domestic interests affected by such a decision.

In deciding to take action under Section 301, the President should be required to take into account the impact of the action on the national economy and the international economic interests of the United States. In addition, the President should be required to conduct a review (on not less than a biennial basis) of each action taken under Section 301 in order to determine its effectiveness and whether continuation of such action is in the national interest.

The President should be required to rescind an action taken by him under Section 301 if (1) he determines that continuation of the action is not in the national interest, or (2) the offending act, policy, or practice is eliminated by the foreign country.

Rationale.—We must be careful not to undermine our international obligations under the GATT and other international agreements or to trigger escalating retaliation. Negotiation is the most effective remedy for resolving problems and avoiding foreign retaliation. However, in order for the President to have negotiating leverage, he must have authority to take affirmative action in the event negotiations fail. Imposition of restrictions on foreign imports, services or investment is always risky in terms of provoking escalating retaliation. The risks are even greater in the event there is a need to impose restrictions on products, services or investments not involved in the original action under Section 301. Such "cross-over" authority is, however, necessary in order to provide the President with a wide range of responses in order to enhance his negotiating leverage. Because of these risks, the President's au-

thority should be carefully circumscribed in order to protect the national interest as well as the private parties affected.

C. *Issue.*—Should the Executive Branch be required to undertake studies or submit reports which (1) identify foreign barriers and (2) recommend actions to obtain their elimination?

BR Position.—BR supports a program to identify foreign barriers to market access. Such a program should provide for private sector input and a procedure for assuring confidentiality of information. BR does not support disclosure of actions to deal with removal of trade barriers.

Rationale.—The business community and the Excutive Branch need more guidance and encouragement to initiate investigations under existing U.S. trade laws. An inventory of barriers will focus the attention of the Executive Branch and the business community on the need to take action to remove foreign barriers. However, a public report on what actions are planned could reduce negotiating flexibility and undermine chances for success.

II. NEGOTIATING AUTHORITY

A. *Issue.*—Should the President be given specific authority to negotiate bilateral or multilateral agreements with respect to foreign direct investment, services and high technology?

BR Position.—BR supports legislation which would give the President specific negotiating authority in these areas. Any such legislation should—

Provide, where appropriate, for sectoral negotiations, in accordance with Section 104 of the Trade Act of 1974.

Provide that, while multilateral agreements may be preferable, bilateral agreements are, as recognized in Section 105 of the Trade Act of 1974, entirely appropriate.

Provide that where negotiations result in a new reduction of barriers, the United States may apply conditional Most-Favored-Nation status under the ground rules set out in Section 126 of the Trade Act of 1974.

Rationale.—Currently there are few international agreements in any of these areas. A statutory provision which would specifically authorize the President to negotiate agreements in these areas would both clarify Presidential authority and encourage such activity.

III. LEGISLATION NEEDED TO FACILITATE NEGOTIATIONS WITH RESPECT TO SERVICES

A. *Issue.*—Is there a need to establish a services industry development program in the Department of Commerce?

BR Position.—There is a need for a program which would develop the data needed for formulating services industry negotiating strategies and objectives. There is also a need to allocate a fair share of existing export promotion programs, such as Export-Import Bank financing, to service industries.

Rationale.—Preparation of negotiating positions and objectives requires a systematic analysis of foreign barriers as well as federal and state regulation of the service industries.

B. *Issue.*—Should Section 301 be amended to provide more explicitly that service sector trade is covered?

BR Position.—Section 301 appears to already cover service sector trade. In order to clear-up any ambiguity, however, Section 301 should be amended to clarify that coverage.

Rationale.—The President should have unambiguous authority to use Section 301 to remove unfair trade practices in service sector trade.

C. *Issue.*—How is coordination with state agencies best achieved so as to ensure that negotiated agreements will receive necessary ratification?

BR Position.—Current legislative proposals which would require the U.S.T.R. to consult regularly with representatives of state governments are not sufficient in that this mechanism would not adequately ensure that any negotiated agreements would be approved by the states. Consideration should be given to the establishment of an intergovernmental task force which would work with the states to develop appropriate procedures to ensure expedited implementation of trade agreements in those areas subject to state regulation.

Rationale.—Procedures limited to consultation with the states prior to and during negotiations will not provide adequate assurances to our trading partners that negotiated agreements will receive the necessary domestic ratification. Such lack of assurance will make our trading partners reluctant to go through the strenuous effort of negotiating agreements with us. An intergovernmental task force which would

work with the states to establish ratification procedures prior to negotiations is the most effective vehicle for ensuring that trade agreements will be expeditiously implemented.

D. *Issue.*—Do we need additional tools by which to monitor and regulate foreign services—i.e., registration procedures?

BR Position.—This proposal is inappropriate.

Rationale.—A registration requirement is a burdensome one. This requirement could invite retaliation by trading partners or, at a minimum, provide an excuse for restrictions on U.S. firms abroad. In addition, many foreign service sectors are already regulated by the states or by federal agencies. This new registration proposal may be duplicative of these procedures.

IV. LEGISLATION NEEDED TO FACILITATE NEGOTIATIONS WITH RESPECT TO INVESTMENTS

A. *Issue.*—Should Section 301 be amended to explicitly provide the President authority with respect to investment?

BR Position.—Section 301 should be amended.

Rationale.—As in the case of services, there are few international agreements to protect the interests of U.S. investors abroad. An unambiguous extension of the President's Section 301 authority to cover investment with respect to unfair practices is needed to provide the President with negotiating leverage.

B. *Issue.*—How is coordination with state governments best achieved so as to ensure that negotiated agreements will receive necessary ratification?

BR Position.—An intergovernmental task force should be established to develop mechanisms to harmonize state investment incentives and other relevant programs with international agreements.

Rationale.—Again, an intergovernmental task force would provide the best vehicle for developing procedures which will ensure that investment agreements are expeditiously implemented.

V. ROLE OF INDEPENDENT AGENCIES

A. *Issue.*—Should independent agencies be authorized to consider foreign practices in their licensing procedures and to restrict foreign investment, services, or imports on the basis of denial of equal access?

BR Position.—Such broad and unguarded authority should not be entrusted to independent agencies.

Rationale.—Where some response to foreign business is needed, it should be the President, not the independent agencies, who takes such action. This approach was endorsed in the legislative history accompanying the Trade Act of 1974. A particular agency will not be cognizant of all the foreign policy and national security implications of trade actions. A unilateral decision by an independent agency to offset foreign barriers in one sector could trigger foreign retaliation in a sector more important to the economic interest of the United States as a whole or could jeopardize on-going negotiations.

VI. SPECIAL ANTIDUMPING AND COUNTERVAILING DUTY TREATMENT

A. *Issue.*—Do we need to establish a new cause of action based on subsidization or unfair pricing with regard to services or high technology products?

BR Position.—These proposals are inappropriate.

Rationale.—Concepts of antidumping and countervailing duties applicable to tangible goods may not be easily transferable to services. For most services there are not reliable means to measure or establish that an unfair trade practice has occurred. High technology products are already covered by existing antidumping and countervailing duty laws. No sector should be given any special treatment under the antidumping or countervailing duty laws. If these laws are not working, we should overhaul them—not alter them piecemeal.

Chairman GIBBONS. Thank you, Mr. Levy.

May I ask our friends in the television, if you are not using these lights, we would appreciate your saving the Government some money. Any time you can turn them off, we will cheer real quietly for you. We are about to go blind up here.

Our next witness is Mr. Merlin E. Nelson, who is vice chairman of AMF and who is the chairman of the Emergency Committee for American Trade.

STATEMENT OF MERLIN E. NELSON, VICE CHAIRMAN, AMF, INC., ON BEHALF OF THE EMERGENCY COMMITTEE FOR AMERICAN TRADE

Mr. NELSON. Mr. Chairman, I am pleased to be with you today on behalf of the Emergency Committee for American Trade. Most of the 22 years I have worked for AMF have been in the international sector including 9 years resident in London, England, while I was vice president in charge of AMF's international operations. AMF is a U.S. multinational corporation with sales last year of $1.3 billion. Our business is concentrated in industrial technology and leisure products.

The members of ECAT have carefully examined the reciprocity issue. We believe that much of the current debate about reciprocity is fueled by the United States being lax in seeking enforcement available to us of our own trading rights under both the GATT and domestic statutes.

ECAT's examination has led us to the conclusion that there already exists a wide variety of international trade statutes on the books that provide necessary authorities to deal with many current trade problems and to secure more open market access for U.S. goods abroad. The gaps that we see conspicuously absent in our domestic laws relate to international investment and international trade in services—gaps that are addressed in H.R. 6773 and S. 2094.

We in ECAT were most concerned with several of last year's legislative proposals for a new reciprocity policy. Our concerns were with the automaticity of approaches that would in essence have placed the United States in a position to retaliate against foreign practices restrictive of U.S. trade that did not conform to U.S. policies and regulations. Such an approach would jeopardize the whole GATT system so painstakingly put in place over a number of decades. There would be no winners in such a trading environment. Such trade restrictions would beget others.

We are gratified that the above approach has been rejected and replaced in H.R. 6773 and S. 2904 with a renewed commitment to the traditional multilateral concept of reciprocity. At the same time, ECAT members are concerned that protectionist amendments may be offered to those bills. We are particularly concerned with proposals for domestic content requirements for sales of automobiles in the United States.

If passage of new trade legislation would lead to enactment of such protectionist provisions, I believe that we would all be much the poorer. For example, the enactment of domestic content requirements would be a direct encouragement to other countries to do the same and could lead, if extended to other sectors, to a severe cutback of world trade.

We broadly support the approach adopted in H.R. 6773 and S. 2094 with regard to our Nation's trade direction. It should be emphasized that the provisions in such a bill should be consistent with U.S. international obligations. At a time when the GATT work program for the 1980's is under consideration, it is in the interest of the United States to continue to demonstrate leadership in building the international trading system.

On this ground, we consider the section 301 changes in the bill as among the most important. Specifically, as regards the changes contemplated in section 301 of the Trade Act, we would hope that the committee would define the terms unreasonable, unjustifiable, and discriminatory in a manner consistent with the principles of GATT to the extent that they apply to trade and investment transactions.

When ECAT testified before the Senate Finance Committee, we indicated our readiness to support appropriate trade legislation in four major areas. Three of those areas are covered by the pending bill:

Compilation of an inventory of foreign barriers to U.S. trade, services, and investment, together with a program of action to alleviate or eliminate such barriers;

Authority for the President, under section 301 to negotiate on foreign direct investment subject to appropriate safeguards; and

Presidential authority to negotiate for improved access for U.S. trade in services.

The fourth area which is not covered by H.R. 6773 is a limited Presidential authority to negotiate tariff changes, primarily in order to alleviate tariff disparities between the United States and other countries. It is our view that such a provision, together with the other provisions in the bill, would be of assistance to the competitive sectors of our economy.

I would appreciate your including as part of the hearing record ECAT's formal statement on the reciprocity issue.

Thank you.

Chairman GIBBONS. We will do that. We appreciate your testimony.

[The prepared statement follows:]

STATEMENT ON RECIPROCITY BY THE EMERGENCY COMMITTEE FOR AMERICAN TRADE

SUMMARY

The members of the Emergency Committe for American Trade firmly believe that expansionary international trade and investment policies are in the national interest of the United States and its trading partners. While there are a number of current vexing trade problems, ECAT opposes solutions that would see the trade pendulum swing toward bilateralism and protectionism.

The United States should vigorously enforce its international rights under both the GATT and a wide variety of domestic foreign trade statutes. Illegal foreign trade barriers should be dealt with expenditiously in order to sustain confidence in this country that the existing system of reciprocal rights and obligations serves our interests.

ECAT recognizes that current rules and enforcement procedures are either inadequate or nonexistent for trade in agriculture and services, and for foreign direct investment. ECAT would support appropriate legislative authorities for the President to negotiate improvements in these areas.

A number of current legislative proposals would grant the President authority to impose trade restrictions against countries who do not provide "reciprocity" to the United States. Exactly how "reciprocity" would be defined is not at all clear although the thought seems to be that the United States could restrict imports and investments from a country offering either less access to its markets than does the United States or that is running a trade surplus with the United States. This concept of bilateral reciprocity while containing seeds of equity also contains the threat that a general practice of bilateral trade balancing could considerably diminish current volumes of world trade. It could also undermine the present world trading system.

ECAT believes that the present GATT system provides an adequate and proven basis for determining and achieving trade reciprocity and that the concepts implicit in current "reciprocity" bills could prove harmful to U.S. trading interests. Nevertheless, drawing on some of the helpful provisions in the "reciprocity" bills, ECAT would be prepared to support trade legislation that would provide:

For compilation of an inventory of foreign barriers to U.S. trade, services, and investment, together with a program of action to alleviate or eliminate such barriers. A listing of similar U.S. barriers should also be undertaken;

For authority for the President under Sections 301-304 of the Trade Act of 1974 to negotiate on foreign direct investment subject to appropriate safeguards, as well as for a Presidential mandate to negotiate bilateral and multilateral investment agreements;

For Presidential authority to negotiate for improved access for international trade in services, and

For a limited Presidential authority to negotiate tariff changes, primarily in order to alleviate tariff disparities between the United States and other countries in the high technology and other areas.

STATEMENT

Not as academic theorists but rather as practical businessmen, the members of ECAT firmly believe in expanding international trade and investment because they see in such expansion benefits for the United States and the world economy as well as for their own firms. For this reason, ECAT has strongly suported efforts of our government seeking more open markets. ECAT also has encouraged businessmen overseas to support policies that ensure fair treatment of U.S. goods in foreign markets and to oppose restrictions on U.S. foreign direct investments. These have been the objectives of ECAT from the beginning and they remain ECAT's objectives today.

Increasingly, ECAT members see that the world trading system is not working satisfactorily. Despite the success of the Tokyo Round of multilateral trade negotiations, barriers to trade appear to be proliferating. Some of these barriers are clearly illegal under internationally agreed upon trading rules and can be dealt with under existing domestic law and rules of the world trading system. It is important that the Administration identify such illegal practices and vigorously seek their elimination through the processes of consultation, conciliation and, where necessary, resort to the dispute settlement procedures of GATT. Nothing less will sustain confidence in this country that the existing system of reciprocal rights and obligations serves our interests.

Trade with Japan poses a number of vexing problems. While a seller par excellence in the world marketplace, Japan tends to exclude imported products that would in any serious way compete with its domestic industries and its farmers. This is particularly troubling to the members of ECAT who have supported the development of an open trading system. Indeed, such a system can only be maintained with the full cooperation of its major participants. The system was not intended to be a philanthropic one but rather one based on the reciprocal acceptance of obligations as well as rights.

ECAT members do not wish to see the trade pendulum swing toward bilateralism and protectionism. They do want to see increasing openness in foreign markets and increasing acceptance of the most-favor-nation principle. Among other things, ECAT members would like to see negotiations on the raft of nontariff trade barriers in the investment and services sectors; on the imbalance between the benefits received from and the support provided to the international trading system by Japan and by many of the newly industrializing countries; and on the growing reliance on subsidization of agricultural and other products by many of our trading partners. In dealing with these trade and investment problems we must take into account our overall national interests, ranging from national security to maintenance of the health of the international economic system.

ECAT recognizes that current rules and enforcement procedures are either inadequate or nonexistent for trade in agricultrue, services, and foreign direct investment. In these areas, we must provide our government with appropriate bilateral and multilateral agreements.

The private sector and the government have available to them a wide range of international trade statutes designed to provide relief from both fair and unfair foreign trade practices. Many of these laws appear to be underutilized. The reasons are many and varied. Among them are the economic costs involved in processing trade complaints with the administering agencies; limited government resources; conflicts

between domestic and foreign policy objectives; and the failure to anticipate problems in time for the ameliorating statutes to be of help.

Despite the wide range of trade laws, it is our view that the President may need additional statutory authorities to deal with foreign restrictions on direct investment by citizens of the United States. Clarification of current laws may also be necessary to enable the Executive to handle disputes in the services area.

A number of legislators have introduced trade bills in this session of the Congress. Several of them would grant the President negotiating authorities in the field of services. Others would grant the President negotiating authority in the field of international investment. A number of the bills would amend U.S. trade statutes to grant the President authorities to achieve "reciprocity" in our economic dealings with other countries.

A problem with most of the "reciprocity" bills is that they provide no clear definition of what the term is intended to mean. One thought, however, seems to be that the United States could restrict imports and investments from a country offering less favorable access to its markets than does the United States. A similar thought was expressed by Senator Robert Dole in a January 22, 1982, letter to The New York Times suggesting that "reciprocity should be assessed not by what agreements promise but by actual results—by changes in the balance of trade and growth in investment between ourselves and our major economic partners."

Other proponents of "reciprocity" cite the U.S.-Japan trade imbalance in interpreting the concept to mean balancing trade flows country by country or even within narrow industrial or product sectors. While there are elements of seeming equity in this concept it is quite different from the traditional one whereby reciprocity expresses the principle that countries should have fair and nondiscriminatory access to each others' markets for products they produce competitively. In international trade negotiations based on this principle the United States has achieved reciprocity on the basis of negotiating a balanced package of concessions and benefits between itself and other nations. Under this multilateral concept of reciprocity, which ECAT supports, the United States achieves reciprocity when the aggregate benefits of concessions granted the United States by others are substantially equivalent to the concessions granted to them by the United States.

In the MTN negotiations that were concluded in 1979, nontariff barrier codes were negotiated on subsidies, procurement, standards and customs valuation. While the trade consequences that might follow from these codes were and are unknown, a measure of reciprocity was identified. It was the common undertaking of the code signatories to abide by the code rules. Under this concept, reciprocity means equivalent competitive opportunity in the case of government procurement covered by the procurement code and equal ground rules in the case of other codes.

While, as mentioned above, there are elements of apparent equity involved in the concept of reciprocity based on a measure of bilateral trade balancing, such a concept also poses a number of serious questions. Among them is the question of legality under our GATT and other contractual obligations, such as those in tax treaties and Treaties of Friendship, Commerce, and Navigation requiring that both most-favored-nation and national treatment be accorded to foreigners and their products in the United States. If the United States restricted imports in violation of international obligations in order to achieve a bilateral trade balance, existing international rules authorize the country whose trade was so restricted to retaliate against the United States.

Another major question would be the economic impact on U.S. exports and foreign investments if our trading partners should resort to similar reciprocity measures. While it is true that the United States has significant deficits in its trade with certain countries (for example, Japan) and in certain sectors (for example, automobiles), we enjoy significant surpluses with other countries (for example, Europe) and in important sectors (for example, agriculture). Just last year, the United States, for example, had a nearly $14 billion trade surplus with Europe which did not quite cover the nearly $16 billion trade deficit with Japan (based on F.A.S. statistics).

There is also the question whether broad acceptance of the principle of bilateral balancing would serve U.S. interests. The idea of forcing balance on a bilateral or narrow sectoral basis would significantly limit the benefits for all participants in a world trading system based on the principle of fair and nondiscriminatory access to global markets. Moreover, an attempt by the United States to impose a unilateral standard of fairness on its trading partners could begin a process leading ultimately to unraveling valuable trade commitments achieved in past negotiations that have encouraged a rapid and sustained growth in world trade for the benefit of all participants.

Fortunately, the Administration and members of Congress appear to be steering away from a concept of reciprocity based on narrow bilateral or sectoral balancing and are working collaboratively to develop legislation required to deal with problems that the world trade system does not address or addresses inadequately. ECAT is fully prepared to cooperate with this effort and has developed a set of guidelines that it would like to see incorporated in trade legislation that might be considered by the Congress.

In the remainder of this statement the Emergency Committee for American Trade suggests principles and guidelines that it would like to see incorporated in any international trade legislation that might be fashioned by the Administration and the Congress. We strongly believe that any legislation should be consistent with our international obligations in the GATT and elsewhere and that new legislation should not establish unilateral courses of action for the solution of foreign trade problems. We would rather see solutions to such problems worked out through existing international trading rules and domestic statutes in order to avoid international economic conflicts that would be harmful to all participants. Where the present structure is incapable of providing the mechanism for the solution of trade problems, we urge that common solutions be found through modification of the GATT itself and through conforming domestic legislation.

In carefully studying existing U.S. international trade statutes, we were impressed with their variety and scope. Nevertheless, we do believe that there are gaps in domestic law, particularly in the areas of foreign direct investment and international trade in services. Accordingly, we do believe that legislation providing the President with negotiating authorities in those areas would be a positive step that ECAT would want to support. Our comments on what such legislation might cover follows:

PURPOSES OF A TRADE BILL

ECAT members see five basic purposes that should be encompassed by any new trade bill.

First, it should provide that the United States maintain is leadership in working internationally for the removal of barriers to trade, services, and investment.

Second, it should require the identification and compilation of an inventory of the principal foreign barriers to United States goods, services, and investment.

Third, it should augment the ability of the President to enforce United States rights under multilateral trade agreements and to negotiate on a bilateral and multilateral basis for the elimination or reduction of foreign barriers to United States goods, services, and investment.

Fourth, it should include provisions designed to secure more open access to foreign markets for United States goods, services, and investment.

Fifth, it should be designed to foster the economic growth of the United States by providing for the expansion of United States commerce and investment.

BASIC PROVISIONS

An Inventory of Barriers to Trade.—Available inventories of tariff and nontariff barriers to United States goods, investment, and services are inadequate. Any legislation should instruct and authorize the President to develop an inventory of major obstacles to expanding trade and investments arising out of policies of our trading partners, both in the advanced and developing worlds.

Specifically, the United States Trade Representative should analyze, with the assistance of other agencies, the acts, policies, and practices of our principal trading partners to determine whether they are (1) inconsistent with the provisions of, or otherwise deny benefits to the United States under any trade agreement or (2) are unjustifiable, unreasonable, or discriminatory and burden or otherwise significantly restrict United States commerce and investments.

The United States Trade Representative should then report his major findings to the President, together with (1) recommendations on ways to deal with specific problems which have been identified and which are not now adequately covered by multilateral or bilateral agreements and (2) an identification and evaluation of some major United States practices which our trading partners believe significantly restrict foreign commerce and investment. The report on findings should be kept current after its release.

Most importantly, an inventory of this sort would provide the basis for developing a broadly conceived strategy to reduce the sources of dissatisfaction with the current system and to lay the groundwork for expanding international trade and in-

vestment within the framework of rules that are widely perceived to be fair and constructive.

Authority for Negotiations on Direct Investment.—The President has no basic statutory negotiating authority in the field of foreign direct investment. He is, therefore, relatively powerless to negotiate on such foreign barriers to U.S. direct investment as performance requirements or the denial of licenses for U.S. investments.

Investing abroad is of vital importance to the U.S. economy and to U.S. firms. The development of international rules on foreign direct investment, therefore, is of prime importance. Accordingly, ECAT recommends the amendment of Sections 301 through 304 of the Trade Act of 1974, as amended, to extend their authorities to cover foreign investment. This would arm the President with authority to retaliate against unjust foreign investment restrictions. The existence of this authority would grant the President a significant negotiating instrument that should help him in seeking international investment rules in the GATT and elsewhere, as well as in negotiating bilateral investment treaties with our trading partners.

The recommended grant of Section 301 investment authority to the President should include appropriate limitations to insure that adequate consideration is given to the potential cost to the United States. We, therefore, suggests such limitations as:

Requiring the President's investment-restricting actions to be taken within existing statutory authorities such as the Mineral Lands Leasing Act.

Requiring the President to first make an explicit set of determinations of national interest, economic impact, and the likelihood of achieving success.

Most importantly, the President should be given the mandate to negotiate bilateral and multilateral agreements to eliminate or reduce barriers to direct investment.

Authority for Negotiating on International Trade in Services.—As in the case of foreign direct investment, Section 301 also should be amended to make it clear that the burdens or restrictions on United States commerce covered by this section cover international trade in services. Foreign restrictions on the right of establishment in foreign markets and restrictions on the operation of enterprises in foreign markets should clearly be covered as should restrictions on the transfer of information in to, or out of, the country or instrumentality concerned.

In addition, the President must be provided clear authority to negotiate bilateral and multilateral agreements with other countries for the elimination or reduction of barriers to service industries.

OTHER PROVISIONS

Flexibility.—To ensure the President maximum leverage, it should be specified that his action to enforce United States rights, or to obtain the elimination of an act, policy, or practice of a trading partner, need not be limited to the equivalent products, investment, or services affected by the offending act, policy, or practice.

To Ensure Adherence to Trade Obligations.—In his determinations in the areas of goods, services, and investment, the President should be required to take into account U.S. obligations under applicable trade agreements and the potential impact on the economy.

Consultations.—In those cases in which there is an affirmative determination by the United States Trade Representative to initiate an investigation with respect to a Section 301-304 petition, the requirement for consultations should be maintained.

To Require the Views of the International Trade Commission.—The President should be required to request the views of the International Trade Commission regarding the impact on the United States economy of both an offending act, policy, or practice of one of our trading partners, or of any action contemplated by him as a response.

Other Negotiating Authority.—A limited authority should be provided to the President, consistent with the five specific purposes noted earlier, to negotiate tariff changes, primarily in order to alleviate tariff disparities between the United States and other countries in the high technology and other areas. Provision should also be made for submission to the Congress of proposals to implement the results of such negotiations.

Chairman Gibbons. Mr. McLellan.

STATEMENT OF ROBERT McLELLAN, CHAIRMAN, INTERNATIONAL TRADE POLICY COMMITTEE, NATIONAL ASSOCIATION OF MANUFACTURERS, AND VICE PRESIDENT FOR INTERNATIONAL AND GOVERNMENT RELATIONS, FMC CORP.

Mr. McLELLAN. Thank you, Mr. Chairman.

As you know, I am vice president of FMC Corp., a multinational diversified producer of machinery and chemicals with 1981 sales of $3.5 billion in the United States and some 150 other countries. I am also a former Assistant Secretary of Commerce for Domestic and International Business and am here today as chairman of the International Trade Policy Committee of the National Association of Manufacturers.

I have a complete statement I would like to file for the record and make just a few comments.

Legislation you are considering has a potential to significantly affect my company, the broad spectrum of firms represented by NAM, and the economic well-being of the United States. The currently worldwide recession has caused belt-tightening and soaring unemployment everywhere but in Japan.

Last year, for example, our deficit in merchandise trade was $39.7 billion and with Japan alone it was $18.1 billion. The failure to deal successfully with the challenge of Japan is not so much a weakness in the law as is our apparent inability as a nation to fashion and implement an effective strategy.

I brought with me a NAM board resolution on United States-Japan commercial relations. I submit that as part of our complete statement. That sets out in broad outline what we believe the objectives of that strategy might be.

I also brought a letter from NAM's president, Alexander Trowbridge, sent to President Reagan.

This Congress seems to be working toward two different approaches to these problems. One, the approach of the domestic content legislation would effectively bar a large volume of imports from one sector of the economy. The other embodied in the reciprocity bills would greatly improve the U.S. Government's ability to deal effectively with what we perceive as unfair trade practices.

In NAM's view, domestic content legislation would be very bad law. It shows little promise of increasing employment or reviving the American automobile industry. It would be a blatant violation of our commitments under the GATT and would probably create more problems than it would solve.

I hope this subcommittee will thoroughly review any domestic content bill likely to be considered by the full House.

In the meantime, NAM's trade committee's resolution on this legislation is again included with our complete statement.

I would appreciate it if the subcommittee would give particular attention to that statement. In contrast, the reciprocity bill, as reported out of the Senate Finance Committee and introduced in the House by Mr. Frenzel, S. 2094 and H.R. 6773 respectively, we believe are potentially very helpful bills. These bills rest on three principal points:

First, they would provide a systematic method for improving and developing U.S. trade policy; second, they would strengthen the ad-

ministration's ability to deal with "unreasonable," "unjustifiable," and "discriminatory" practices that affect U.S. trade and investment and they would provide specific negotiating authority with respect to both services and investment and in the Senate version with respect to certain high technology items as well.

At present there is a disturbing lack of symmetry between our trade problems and our actions. It is not necessary to question the merit of any GATT cases we have against Europe to note the irony of the fact, as you mentioned earlier this afternoon, that there are half a dozen such cases in the countries in the European community where we have traditionally enjoyed a strong trade surplus, yet no cases in the GATT against Japan.

Yet our problems with Japan pose a more serious problem to the trading system than those with Europe.

By requiring the administration to identify and quantify each year foreign impediments to U.S. trade, Congress would make a helpful contribution to correcting this imbalance.

As for Mr. Frenzel's recommendations for strengthening the 301 process, three of his recommendations would in our view justify the legislation on their own. I refer to first the explicit inclusion of "failure to adequately protect industrial property rights" within the meaning of the word "unreasonable" and the word "unjustifiable," as these words are used in the section 301; also to the explicit inclusion of investment within the meaning of the word "commerce" as is used in section 301, and finally, the amendments to section 302 of the Trade Act of 1974 authorizing the U.S. Trade Representative to pursue 301 cases on his own initiative.

As you know, section 301 serves a dual purpose. On the one hand it provides U.S. citizens a mechanism for demanding compliance by foreign traders with international agreements; on the other hand, the statute makes it clear the President's ability to act against unfair trade practices is not limitd to those already subject to international agreement.

None of the three profound changes mentioned above, relate to current GATT rights. Understandably, the administration may be reluctant to act even with this new authority without first trying where appropriate to achieve an international agreement.

This is especially true with respect to investment and the legislation explicitly provides negotiating authority in this area.

The hope must be that the existence of these provisions with their implicit threat of unilateral action by the United States will encourage our trading partners to negotiate on investment, trade and services.

It should be obvious, however, that even the incentive value of these provisions will be lost if the administration does not make it clear to other countries where unilateral action is called for, it shall be taken.

Finally, Mr. Chairman, I would like to comment on the only significant difference between H.R. 6773 and S. 2094, which was approved by the Senate Finance Committee last month.

The Senate bill gives the President tariff-cutting authority with respect to certain high-technology items; the Frenzel bill does not.

As a broadly based horizontal trade association, NAM has little interest in promoting a sectoral approach to trade. Indeed, we

would have preferred to have dealt with this problem by extending the President's tariff-cutting authority under section 1904 of the Tariff Act of 1974.

However, if the people believe the President should have that authority, it would in our view be foolish to withhold such authority for the sake of some theoretical concern about a sectoral approach to trade.

Therefore, we do support the high-technology provisions of S. 2094.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF ROBERT MCLELLAN, VICE PRESIDENT, FMC CORP., ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. Chairman, members of the Committee, I am Robert McLellan, Vice President of FMC Corporation, a multinational, diversified producer of machinery and chemicals with 1981 sales of $3.5 billion in the United States and 150 other countries. I am also a former Assistant Secretary of Commerce for Domestic and International Business, having served in that post from 1969 to 1971. I am here today as Chairman of the International Trade Policy Committee of the National Association of Manufacturers.

The legislation you are considering has the potential to affect significantly my company, the broad spectrum of firms represented by NAM, and the economic well-being of the United States. I am, therefore, pleased and honored by the opportunity to present to you today our views on this legislation.

The roughly 12,000 members of the National Association of Manufacturers account for approximately 80 percent of U.S. industrial output and 85 percent of U.S. industrial employment. Because the lion's share of U.S. exports are shipped by the larger Amercian companies, almost all of whom are NAM members, it is a fair guess that our members account for an even greater portion of U.S. exports than of U.S. industrial production. In practical terms, this means that our concern for an open international trading system is second only to our concern for the strength of the U.S. industrial base. In fact, the two cannot be separated. At present both are in some danger.

The current worldwide recession has caused belt-tightening and soaring unemplyment in the United States and in Europe but not of course in Japan, which even in the unhappy year of 1981 managed an astounding $115.6 billion surplus in trade in manufactured goods. The continued contributions of economically pressed countries to the continued success of Japan have motivated many to look at that country's export-led growth in a new light. This inclination is reinforced by Japan's ability to hold on to or increase her share of shrinking markets such as the U.S. automobile market, and it is further exacerbated by the legitimate questions that have been raised about some of the offensive policies behind Japan's international commercial triumphs.

STRATEGY FOR JAPAN

In our view, the failure to deal successfully with the challenge of Japan is not so much a weakness in the law as it is our apparent inability to fashion and implement an effective strategy. I have brought with me an NAM Board Resolution of U.S.-Japan Commercial Relations. This sets out, in broad outline form, what we believe the objectives of that strategy should be. I also have a letter that NAM's President, Alexander Trowbridge, has sent to Secretary Regan regarding the damage being done to U.S. industry by the dramatic undervaluation of the yen. I would be grateful if both of these could be considered part of my testimony.

DOMESTIC CONTENT

Whatever the prudent limits of legislation, it is only natural that Congress should react to the trade problems we confront with legislative proposals. Among these there are two—I am referring to approaches rather than bill numbers—that have become the subject of serious debate and which must be considered candidates for the statute books. One of these, the domestic content legislation, would, in NAM's

view, be very bad law. It shows little promise of increasing employment or of reviving the American automobile industry.

This would be a blatant violation of our commitments under the General Agreement on Tariffs and Trade and would probably create more problems than it would solve.

I hope that this Subcommittee will thoroughly review any domestic content bill that is likely to be considered by the full House. In the meantime, I would be grateful if the NAM Trade Committee's resolution of this legislation could be included in the record as part of my testimony.

RECIPROCITY

My main purpose in raising the subject of domestic content here is to contrast it with the other prominent proposal for new trade law, namely the reciprocity bills, such as Congressman Frenzel's bill, H.R. 6773.

This is a good bill. By requiring the Administration to identify annually the most serious barriers to U.S. trade and to attempt to quantify them, this legislation could have a significant, beneficial impact on the development of American trade strategy. At present there seems to be little correlation between the U.S. actions in the GATT, for example, and our national concerns about trade. We are pursuing half a dozen GATT cases against the European Community and not one against Japan. It is not necessary to question the merits of any of the cases we have taken to the GATT (wheat flour, sugar, pasta, etc.) to appreciate the irony of that. Traditionally, we have had a large trade surplus with Europe. It was down in 1981 to $10.7 billion from 1980's strong $17.6 billion, but it is still impressive and important. In contrast, the series of alarming deficits with Japan threatens to continue and grow worse. Because of this lack of symmetry between action and interests, NAM has suggested that the Administration review its trade relationship with Japan as the Europeans have, in the context of GATT Article XXIII. Larry Fox, NAM's Vice President for International Economic Affairs, noted in testimony in May before the Joint Economic Committee that, "A society like Japan with a trade surplus in manufactured goods of $93.7 billion (1980) and an exports-to-imports ratio in manufactured products of 4 to 1 must be doing something right. It must also be doing something fundamentally wrong."

We shall not succeed in demonstrating that what is wrong for Japan's trade partners is wrong for Japan unless we systematically identify and quantify the barriers and trade practices at issue.

I have discussed the identification and quantification of trade barriers, because these requirements and the consultation with Congress on trade policy priorities are, in my view, the most significant features of this legislation. Nevertheless, we are in full agreement with the first of the stated purposes of the bill: "To foster economic growth . . . through the achievement of commercial opportunities in foreign markets substantially equivalent to those accorded by the United States." There is, however, a paradox in that objective that is worth pointing out.

In intent, I take the language as reflecting the traditional American concern with equality of opportunity. Looked at from another point of view, it would be impossible for any nation to provide "commercial opportunities equivalent to those accorded by the United States". No market in the world is as rich as the U.S. market. And in most product areas no market of the world has been as open to imports. The question then is whether the United States will continue to be able to share this most precious resource with the world or whether like the Japanese we will husband portions of it for our "infant industries," that is, the industries of the future.

There is a sense in which this legislation, H.R. 6773, rests on three principal points:

It provides a systematic method for improving and developing U.S. trade policy.

It strengthens the Administration's ability to deal with "unreasonable", "unjustifiable", and "discriminatory" practices that affect U.S. trade and investment; and

It provides specific negotiating authority with respect to both services and investment and in the Senate version with respect to certain high technology items as well.

Having dealt with the first of these, I should like to devote the balance of my testimony to the other two.

In general, we find Mr. Frenzel's recommendations for strengthening the 301 process extremely helpful. Three of these changes would in my view justify the legislation on their own. I refer to:

The explicit inclusion of failure to adequately protect industrial property rights within the meaning of the word "unreasonable" and the word "unjustifiable" as these words are used in Section 301;

The explicit inclusion of investment within the meaning of the word "commerce" as it is used in Section 301; and

The amendments to Section 302 of the Trade Act of 1974 authorizing the U.S. Trade Representative to pursue 301 cases on his own initiative.

As you know Section 301 serves a dual purpose. On the one hand, it provides U.S. citizens a mechanism for demanding compliance by foreign traders with international agreements. On the other hand, the statute makes it clear that the President's ability to act against unfair foreign trade practices is not limited to those already subject to international agreement. None of the three profound changes relate to current GATT rights. Understandably, the Administration may be reluctant to act, even with this new authority, without first trying where appropriate to achieve an international agreement. This is especially true with respect to investment, and the legislation explicitly provides negotiating authority in these areas. The hope must be that the existence of these provisions, with their implicit threat of unilateral action by the the United States, will encourage our trading partners to negotiate on investment and trade in services. It should be obvious, however, that even the incentive value of these provisions will be lost if the Administration does not make it clear to other countries that where unilateral action is called for it shall be taken.

FOREIGN DIRECT INVESTMENT

The dilemma of international investment in the 1980s is perhaps the best illustration of the necessary relationship between the proposed expansion of 301 and the "reciprocity" bills' negotiating mandate. H.R. 6773 and S. 2094 would both amend the Trade Act of 1974 to include explicitly under the definition of commerce, "foreign direct investment by United States persons with implications for trade in goods and services." This revision reflects and addresses the inconsistency between the proper exploitation by many countries of a more liberalized world trading system and increasing tendency of some governments to control foreign investments in ways that are violative of the principles of free trade. Countries that expect to benefit from access to the U.S. markets should not be surprised when we become concerned about their discriminatory investment policies. NAM supports both the broadening of the definition of "commerce" to include direct investment and the adding of investment to the list of congressionally mandated negotiating objectives. These changes give force to our concern. Further they reflect NAM's long standing support for the free international movement of capital, allowing, of course, for restrictions necessary for safeguarding national security and related purposes.

Many countries have tailored their investment policies to optimize their international export positions. This is objectionable, and it is unfortunate that the U.S. government has failed to use the legal powers available to it under existing law to respond.

For example, thirty years ago the Government of Japan signed a treaty of Friendship, Commerce and Navigation with the United States. The promise of that treaty was that American firms investing in Japan would receive treatment equal to that accorded to Japanese companies, at least in so far as the application of Japanese investment law was concerned.

Since then, Japan has carefully restricted, controlled or simply prohibited U.S. direct investment in Japan. A few companies received special consideration because their technology was critical to the development of Japan's own technological capabilities. But most U.S. firms have been frustrated by an approval procedure that makes foreign investment in Japan very difficult.

We believe that bringing investment practices within the scope of the term "United States commerce" as used in Section 301 of the Trade Act will bring about a more effective U.S. Government posture to the problems that U.S. firms encounter in international investment. This is urgently needed as a growing number of countries are applying de jure and de facto controls over foreign direct investment within their territories. Among the industrialized countries, Canada and France are particularly notable for enforcing such requirements. U.S. firms also face difficulties in some of the more advanced developing countries, some of which have had restrictive policies on foreign investment for some time.

NAM, therefore, welcomes the idea that bilateral and multilateral investment agreements be a congressionally mandated negotiating objective.

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OECD DECLARATION

There has been growing international recognition that discriminatory treatment of foreign direct investment has a distorting impact on world trade flows and there have been some attempts to address this problem in international negotiations. In 1976 the Organization for Economic Cooperation and Development (OECD) adopted a declaration of principle that members would treat established foreign-controlled firms within their borders on the same basis as domestically-owned companies (the so-called "national treatment" principle). But the OECD National Treatment Declaration, with a companion declaration on incentives and disincentives, is severely limited in its effect on national policies.

These commitments are non-binding statements of intention. For example, Canada agreed to the 1976 declaration. Though Canada has been criticized strongly by a number of countries in the OECD's investment committee because of its increasing violation of national treatment and its frank discrimination against foreign-controlled companies in the energy sector, it has not revised its policies. Refusal to incorporate national treatment principles into policy remains all too common in other member countries as well. In a statement on national treatment, presented last month to the OECD investment committee, the officially recognized private sector Business-Industry Advisory Committee concluded that, "While the principle of National Treatment is generally upheld in OECD member states, significant departures from this principle remain and these are in fact on the rise in certain countries."

Furthermore, the OECD national treatment principle applies only to existing investment, not to rules governing new investments. Further, most countries of the world do not belong to the OECD. There are only twenty-four members, most of them industrialized countries. The entire set of 1976 OECD principles, in fact, were established partly as a guide for the U.N. Code of Conduct on Transnational Corporations but in this long-running negotiation there has, to date, been very little sign that the less developed countries will accept the principle of equitable and non-discriminatory treatment of foreign investment.

NAM, therefore, continues to support and encourage the efforts of the present Administration to seek bilateral agreements with specific countries, which would provide for non-discriminatory treatment of U.S. direct investment abroad, as well as explore a broadening of GATT rules to incorporate an explicit reference to the treatment of foreign direct investment. Both of these actions, we believe, are consonant with the intent and purpose of this legislation.

HI-TECH TARIFFS

Finally, Mr. Chairman, I should like to comment briefly on the only significant difference between H.R. 6773 and S. 2094, which was approved by the Senate Finance Committee last month. The Senate bill gives the President tariff cutting authority with respect to certain hi-tech items; the Frenzel bill does not.

As a broadly based, horizontal trade association, NAM has little interest in promoting a sectoral approach to trade. Indeed, we would have preferred to have dealt with this problem by extending and perhaps expanding the President's tariff cutting authority under Section 124 of the Trade Act of 1974.

We doubt, however, that that extension of Presidential authority will be approved this year. It is being held up, of course, not by people who want their protective tariffs slashed but by those who do not. However, if the companies affected by the Senate bill want the President to have tariff cutting authority with respect to the items listed in the bill—and I believe they do—it would in our view be foolish to withhold such authority for the sake of theoretical concerns about a sectoral approach to trade. Therefore, Mr. Chairman, we support the hi-tech provisions of S. 2094.

Again, Mr. Chairman, I should like to thank you for the opportunity to testify. Larry Fox and I would be happy to respond to questions.

RESOLUTION ON UNITED STATES-JAPAN COMMERCIAL RELATIONS

Whereas Japan's industrial, trade, investment, and financial policies have led to gross imbalances in Japan's trade with the United States and other industrialized countries;

Whereas certain of these policies, as manifested in unduly large global and bilateral manufactured goods trade surpluses, pose a threat to the world trading system and to the industrial base of the United States;

Whereas the National Association of Manufacturers, the principal representative of American industry, regards the health of the U.S. industrial base as fundamental to U.S. well-being and security; and

Whereas the NAM supports a market-oriented, open international trade and investment system;

Resolved That the National Association of Manufacturers should work toward the following goals:

Greater internationalization of the yen and a more appropriate yen-dollar exchange rate;

Reduced barriers to foreign investment in Japan;

Openness of Japanese markets for goods, services and capital equivalent to that of the United States and commensurate with Japan's standing as the second largest economy of the Free World and currently the most dynamic; and

Commitment on the part of the Japanese government and Japanese business to shoulder the full measure of responsibility for the world trading system that Japan's economic strength and stake in the world trade confer upon her.

NAM, working with the American government, will take appropriate steps to inform Japanese government and business leaders of our views and thereby help to bring about constructive solutions to our mutual problems.

Adopted by the NAM Task Force on U.S.-Japan Commercial Relations, March 9, 1982.

Adopted by the NAM Board of Directors, March 17, 1982.

Resolution on Domestic Content Legislation

Whereas the domestic content legislation now pending before the House and Senate (H.R. 5133 and S. 2300 respectively) has implications for all manufacturing sectors and for the conduct of U.S. economic policy both domestically and internationally;

Whereas the National Association of Manufacturers believes the interests of the United States can best be served by strengthening competitive market forces and furthering the rule of law in international trade;

Whereas these bills, by establishing quantitative regulation for the purpose of affording protection to U.S. automotive production, would involve the United States in a serious violation of its obligations under the General Agreement on Tariffs and Trade and would cripple U.S. Government efforts to remove foreign trade barriers, including domestic content requirements, that undermine the international trading system;

Whereas the proposed legislation may prove self-defeating by encouraging an inefficient allocation of resources and retarding the U.S. automobile industry's adjustment to international competition;

Whereas this legislation is ill-conceived in that it would put at risk more jobs than it could reasonably be expected to create;

Whereas the legislation is ill-timed in that there are still administrative remedies open to the automobile industry, e.g., further action under Section 201 of the Trade Act of 1974;

Whereas Congress has yet to consider amendments to Section 201 that would increase the likelihood of relief being granted under Section 201 without violation of the international obligations of the United States;

Whereas the domestic content legislation is inappropriate in that it does not address the underlying causes of the trade friction in the U.S.-Japan commercial relationship, including an undervalued yen, protected markets, barriers to investment, and Japanese commercial policies that adversely affect U.S. industry; and

Whereas the legislation ignores options open to the United States under international trade law:

The National Association of Manufacturers opposes the aforementioned domestic content legislation. We urge the Congress and the Administration to reject it as inappropriate to the problems of U.S. industry, including the automobile industry, and injurious to the pursuit of international economic policies better calculated to preserve and strengthen the U.S. industrial base;

Further, recognizing that domestic content legislation has been inspired in large measure by Japanese policies that have unjustifiably burdened U.S. commerce, the National Association of Manufacturers urges the Congress and Administration to take appropriate action with respect to these policies at the earliest possible moment.

Adopted by the NAM International Trade Policy Committee, July 15, 1982.

NATIONAL ASSOCIATION OF MANUFACTURERS,
Washington, D.C., July 14, 1982.

Hon. DONALD T. REGAN,
Secretary of the Treasury,
U.S. Department of the Treasury, Washington, D.C.

DEAR MR. SECRETARY: In January 1982, the National Association of Manufacturers established a Task Force on U.S.-Japan Commercial Relations. The Task Force membership is broadly representative of U.S. industry, as well as major banks and export-related service industries. This Task Force is now in the process of working on a number of trade, financial and investment issues. The broad outlines of the Task Force's work are set out in a resolution passed by NAM's Board of Directors on March 17, 1982 (copy enclosed). NAM's objectives relate to the resolution of immediate as well as longer range problems of a systemic nature in our commercial relations with Japan.

One of the most critical concerns of the Task Force is the exchange rate between the U.S. dollar and the Japanese yen. We are, of course, aware of the Administration's general concern about the consequences for U.S. industry of the undervalued yen, but regret that no practical steps have been taken or proposed to deal with the problem. The manufacturing community is intensely concerned about the undervalued yen in both the immediate and longer term.

In the short term, U.S. industry is losing market shares at home and abroad. The yen has depreciated since 1980 by approximately 25 percent—from about 200 to the dollar to the 250 level at present. The meaning of this depreciation in competitive terms is dramatic: While Detroit has been seeking to close a $1500 gap between U.S. and Japanese built cars the depreciating yen has in fact given Japan an additional $1200 to $1500 advantage during this time.

In the long term, new investment by American industry is not taking place because in many instances this investment would be uneconomic in light of the inordinately competitive price of Japanese goods resulting from an undervalued yen. To the extent that the Japanese challenge represents the free play of economic forces, it can be viewed as a natural development and should not be interfered with. We have become increasingly concerned, however, that the American response to the Japanese challenge is being distorted and undermined by a gross misalignment between the U.S. dollar and the Japanese yen.

Our concern is not unique. The European Community in its formal case against Japan under Artcle XXXIII of the General Agreement on Tariffs and Trade (GATT) referred to the yen as "a sui generis currency", which was "in certain respects tightly controlled and which has been insulated from the outside world." The Community noted that "the yen does not play a role internationally commensurate with the strength of the Japanese economy." Reference is made to the European view, not so much to buttress our arguments, but to indicate the necessity for international cooperative action in dealing with an international trade and financial problem which cannot be left only to Japanese authorities to deal with and which under present circumstances defies a straight-forward market solution.

Today the yen stands at more than 250 to the dollar—a rate not much higher than in March 1973, when generalized currency floating was established. Indeed, if we utilize the well-known Morgan Guaranty real effective exchange rate index, we find that the dollar is now 16 percent higher in value than in 1973, while the yen is about 15 percent lower, as measured on a multilateral, trade-weighted basis. During this interval the volume of Japanese exports has grown over twice as fast annually as U.S. exports (8 percent to 4 percent). At the same time, the annual price increase for Japanese manufactured exports, in national currrency terms, has been five points per year lower than the equivalent U.S. figure (7 percent to 12 percent). These and other fundamental underlying economic conditions—such as current account balances, official reseves, trade balances, productivity growth, and wholesale price increases—indicate that the nominal value of the yen should have risen much more substantially over this time period against the dollar; instead we have seen a fairly steady drop in the yen since its peak of 180 in 1978.

The interest rate differential between the U.S. and Japanese domestic credit markets is undoubtedly an important reason for the misalignment of the dollar and yen during the last few years. As you know, NAM fully supports the Administration's concern regarding high U.S. rates. However, we feel that reduction in our interest rates will help relieve only part of the exchange rate problem between the dollar and the yen. We are inclined to believe that a good part of the problem will persist despite interest rate changes because the Japanese have to an important degree cut their domestic credit markets off from the influences of the international financial markets.

Japan's low domestic interest rates, which are less than half American and European rates, obviously reflect the interplay of a number of factors, including a superior performance in maintaining a low level of inflation since the 1973-74 oil crisis. It is also important, however, to realize that Japan's domestic credit system relies in many respects as much on quantitative restrictions and official guidance as it does on price in allocating credit to priority sectors of the economy. Consequently, interest rates can remain relatively low and provide a reliable and cheap source of domestic as well as export credit to major Japanese exporters of manufactured goods.

It is not hard to appreciate the current desire of the Japanese government to maintain low interest rates in light of relatively poor domestic economic performance and the need to hold down the cost of financing their large budget deficits. Yet, to what extent are these low rates also enabling Japan to "solve" its domestic economic problems by exporting them through an undervalued currency? Estimates have been made that two-thirds of Japan's almost 3 percent real GNP growth for the fiscal year ending in March 1982 came from exports. It is hardly unreasonable to ask how much longer countries with no real growth and with unemployment reaching toward double digit figures can tolerate this situation, especially in light of a 2 percent unemployment rate in Japan. Does it make much difference if a country pursues a "beggar-thy-neighbor" policy by means of trade protection or domestic monetary and credit policies?

You will appreciate that I am not suggesting that Japan is now actively intervening in foreign exchange markets to bring about a low price for the yen, although Japan has done this in the past. Quite the opposite is the case—since the misalignment at this point is so notorious, causing Japanese officials to be quite defensive respecting the undue trade advantages conferred on Japanese goods in export markets as well as in the Japanese home market. The most "successful" Japanese exchange market intervention was in the mid 1970's, when massive intervention halted the appreciation of the yen. Japanese intervention in January 1981 appears to have halted yen appreciation at that time and perhaps help to set the stage for the current weak yen. Lisle Widman, former Deputy Assistant Secretary of the Treasury for International Monetary Affairs, observes:

"Bank of Japan officials acknowledge that in January 1981 they did intervene to stop the appreciation of the yen when it moved back above 200. Whether they did so because they had concluded that they should protect their trade position by avoiding further appreciation or simply because the rapidity with which the rate was moving created a 'disorderly' market we will never know. Japan had been running a deficit in its current account balance in 1980 and the country was still very concerned about its ability to finance oil imports. I suspect the gut judgment of Japanese officialdom is that a 200 to 220 rate would be best for Japan. Nevertheless, Japanese officials maintain that the intervention was not intended to alter the long-term trend."

Our view is that a good deal of the undervaluation of the yen basically results not from direct exchange rate intervention but from Japanese policies in respect to the domestic credit markets. To the extent that these policies maintain the trade advantages of an undervalued currency, they are a fair target for attention in the International Monetary Fund under Article IV of the IMF Articles of Agreement. This prohibits signatories from manipulating their currencies or taking other action to "gain an unfair competitive advantage" in trade. Additionally Article IV calls for IMF surveillance over exchange rate policies for a number of reasons, including, ". . . behavior of the exchange rate that appears to be unrelated to underlying economic and financial conditions including factors affecting competitiveness and long term capital movements."

We were pleased to see that agreement was reached at the recent Versailles Summit on an improved consultation process involving the IMF and the major industrial countries, as well as the initiation of an IMF study of the efficacy of foreign exchange intervention. We would certainly support Administration efforts to use this consultation process to the fullest in examining the interaction between the Japanese domestic credit markets and the continued undervaluation of the yen. We would also suggest a careful examination of Japanese currency intervention in the 1970's which may have laid the groundwork for the present undervaluation of the yen.

I would conclude by expressing the opinion that the persistence of a seriously undervalued yen for the next several years obviously presents serious obstacles to the modernization of the American industrial base and to the general American economy. The Administration's successful efforts to resist protectionism in this country and abroad has the full support of the National Association of Manufacturers. Perhaps no greater step to assure the continuation of open markets in the U.S. and

around the world could be taken than to help bring about promptly a major appreciation of the yen. It is likely that high U.S. interest rates may persist for some time and lower rates, once achieved, may be only of limited value in the context of the yen-dollar exchange rate. We therefore, urge consideration of policies that work toward the improvement of the operation of the internaitonal monetary system, including the requirement that major trading countries maintain a reasonable foreign exchange value for their national currencies reflecting underlying economic forces.

To date the Treasury has given no indication publicly that the yen-dollar exchange rate is of concern to the U.S. government. To relate how significant this issue is to the revitalization of American industry, I would be pleased to call on you with members of NAM's Board of Directors to elaborate business views on the importance of this critical issue in industry's investment decisions to become more competitive in U.S. and foreign markets. We hope your schedule will permit such a meeting in the near future.

Sincerely,

SANDY TROWBRIDGE.

Chairman GIBBONS. Thank you for your fine statements. Let me ask you as a panel, are the GATT rules still relevant in the eyes of U.S. business? Are the dispute settlement procedures of GATT adequate for U.S. business? What do you think about that?

Mr. EBERLE. Mr. Chairman, I will take a crack at that. I think the rules of GATT are very relevant. In fact, probably something in the neighborhood of 70 or 75 percent of world trade passes under those rules and very successfully. Without those rules, we would have even more trouble than we do.

As far as the dispute settlement is concerned, that should be one of the top priorities for the November ministerial meeting of the GATT.

It is not effective. It is not working well. It needs to have an overhaul and could improve the GATT substantially. I must admit though, if we don't manage our trade problems well between now and November, the agenda on the GATT ministerial may become very small.

Chairman GIBBONS. Or huge.

Any of the rest of you have any views you want to express?

Mr. NELSON. I am not as familiar as Mr. Eberle, obviously, with the rules of GATT.

It is my understanding there isn't any home in GATT for solution of a foreign investment type of restriction. It seems to me that the answer to your question would be that GATT rules are deficient in that respect.

Mr. MCLELLAN. I would add to that, Mr. Chairman.

As you know, we have a concern about industrial property rights on a worldwide basis. When GATT was born 30 years ago, it wasn't a big issue. The technological development of other countries was not so great that it was a real problem for U.S. firms who were leaders in world technology. Today that is not the case.

As a result, there is a big gap in GATT and its ability to deal with that kind of problem.

I agree with Ambassador Eberle that GATT is the best we have at the moment, but it is not adequate to today's environment and today's problems.

Mr. LEVY. I also would like to associate myself with Mr. Eberle's comments. We also have to think long and hard about requesting derogations from the GATT accepting derogations requested by other countries.

If we continue a policy of deciding, for political reasons, to accept derogations from the GATT, we may find ourselves with an empty set of rules that bear no relationship to the economic system that we intended to establish under the GATT.

Chairman GIBBONS. Does the legislation we are considering here today, H.R. 6773, Mr. Frenzel and Mr. Jones' bill, the high technology bill, and the services bill, when considered together, do these send the right kind of signals to the international world as far as trade is concerned? Or do they send the wrong signals?

Mr. MCLELLAN. My view, Mr. Chairman, is that it does indeed. I think that is a step the United States should be taking at this time.

Many of us in industry feel that there may be further steps that will have to be taken to really give American industry the competitiveness that it needs to restore some of the trade deficits.

But, at this point in time, it seems to me this legislation is a step that ought to be taken; see how it works. If it does send the right signal and produce results, that will be great.

If not it may be necessary to come back to you to ask for more.

Mr. EBERLE. Mr. Chairman, I believe it is the right legislation, and will send the right signal.

However, our USTR and the Commerce Department will have to do quite a job of explaining it. It has been tagged a reciprocity bill but in fact it is not a reciprocity bill. There will be a great misunderstanding for those who have not paid close attention to it.

Second, it will still have to be followed up by vigilant enforcement. It doesn't do any good to be a paper tiger.

Chairman GIBBONS. One of you mentioned signals being sent on the domestic content legislation. I just would like to assure the panel that we are planning on having hearings on the domestic content legislation in which we will ask a broad spectrum—in fact, we have had requests from a broad spectrum—of American industry to testify on that bill.

Do any of you have any specific thoughts about the domestic content bill that you would like to express here?

Mr. EBERLE. Mr. Chairman, the U.S. Chamber is categorically opposed to the bill. It is one of the worst bills that has come along in the Congress in a very long time. It will increase car manufacturing costs in the United States; it is a violation of the GATT; and in the long run it is going to lessen rather than increase the employment in the United States; it could potentially affect every other sector of our economy by retaliation.

I could go into a lot more detail, but on balance you can get a feel for the basis of the opposition of the chamber. I think it will give you an understanding of the depth of our concern.

Mr. NELSON. I would like to add this comment, since I did touch on it in my remarks. If you take H.R. 6773, it is really designed to give our Government more weapons with which to enforce free trade.

That sounds like a contradiction, but it isn't. You really can't have freedom unless you have rules. If you don't have rules, you have anarchy.

You need the ability and the obligation of the Government to enforce those.

With that, it seems to me then that the thrust of H.R. 6773 is to push in the direction of opening markets abroad.

The problem with the domestic content is, it is closing markets, starting with our own market at home. So that is just totally contradictory of the thrust and philosophy behind H.R. 6773.

Mr. McLellan. NAM is in the same position, Mr. Chairman. We recently convened a special meeting of the International Trade Policy Committee to specifically discuss domestic content. The position of NAM is exactly that stated by my two colleagues here.

We are definitely opposed to the domestic content legislation.

Mr. Levy. The Business Roundtable does not yet have a position on the local content legislation. We expect to have one very shortly.

As I mentioned earlier, we have articulated a number of principles against which we weigh international trade and investment legislation. It is my personal opinion that the local content legislation is not compatible with those principles.

Chairman Gibbons. I hadn't wanted to put anybody on the spot on that. Somebody mentioned it in their direct testimony.

I wanted to assure you and anyone else that is interested that we do plan to have some hearings on this matter and we are going to have them soon, and they are going to be complete.

We have had a lot of requests for witnesses who wanted to come and express their opinion about it. We expect in the not-too-distant future to announce some specific date in that regard.

Mr. Frenzel.

Mr. Frenzel. Thank you, Mr. Chairman.

You have given this group an opportunity to get in some free testimony on those hearings. They won't have to come back.

Gentlemen, we are indebted to you for your wise counsel, all of your groups have been here frequently, always provided good advice, especially you, Ambassador Eberle. It is very nice to have you back. Good to hear your testimony.

With respect to the chairman's question on local content, there has been speculation that the Senate bill to which each of you referred in your testimony might accumulate a local content provision along the way as it works its way through the Senate.

If the bill was so burdened, what would your position be upon it?

Mr. Eberle. Mr. Chairman, the chamber has reviewed that possibility. In that event we would be opposed to the bill.

Hopefully the Senate sponsor would withdraw the bill if it carried such an amendment.

Mr. Frenzel. Thank you.

Mr. Nelson. I would say the same thing as far as ECAT is concerned.

Mr. McLellan. I would hope the House, in its wisdom, would be able to remove that in conference.

Mr. Levy. The Business Roundtable has already indicated to the Senate that it supports S. 2094 as presently formulated. However, it will withdraw such support if S. 2094 is burdened with any legislation such as domestic content.

Mr. Frenzel. Thank you very much.

Chairman Gibbons. Mr. Bailey?

Mr. Bailey. Thank you very much, Mr. Chairman.

I want to compliment all of you. I think particularly the opinions that you expressed about GATT are so much in accord with my own views, I couldn't help but sit up here and feel very much the Cheshire cat with a grin on my face.

I thank you very much for the sentiments you expressed. I think we have to, in particular, codify—the Council may particularly appreciate the need to do that—some kind of a definition of free enterprise forward worldwide.

We are just going to run into endless cultural, political, and legal conflicts.

I really think that is what it all has to lead to.

The antisubsidy provision of the GATT, have you commented on those? A number of you remarked that the difficulties surrounding GATT are really the fact that they are politically dealt with in such a loose and free way from time to time that it almost becomes a case of accepted practice or look away here, look back to it there.

What are your feelings about the antisubsidy provisions? Do you think they should be enforced more strongly?

A principle should be made of them more strongly? What kind of definition should aply? There are a number of steel cases, for example, where foreign governments gave their steel industry loans that don't have to be repaid or subsidized interest rates or they have offered to finance at a very highly subsidized interest rate the export of large capital intensive projects.

Could any of you comment if, indeed, something should be done in that area, particularly in the area of finances also?

Mr. EBERLE. First of all, the subsidy code will be reviewed right after the ministerial meeting automatically. So many of these issues will be looked at. Specifically in answering your question, the issue of trade related investment is not covered. There is a dispute among governments whether it is covered. Obviously, I should say hopefully, it will be on the agenda for the ministerial meeting and be clarified.

Mr. BAILEY. You saw there is a dispute as to whether or not it is——

Mr. EBERLE. Covered by the subsidy code.

Mr. BAILEY. I see. What is your opinion?

Mr. EBERLE. I think the intent was, certainly on the part of the United States, to see it was covered.

I think it is one of those issues that was kind of quote fuzzed over unquote.

Mr. BAILEY. Do you think it is deliberate or is it a cultural or philosophic difference that didn't come to bear in the negotiations?

Mr. EBERLE. I don't know. In the anxiety to conclude the Tokyo round, and the same was true with the Kennedy round, and with the Dillon round, a lot of things got papered over in the last minute. That is why they had a provision for review.

Mr. BAILEY. Any other comments?

Mr. MCLELLAN. I share the view that it was precisely that.

Mr. BAILEY. Obviously what you are all telling me then, I assume, is that it is not adequately dealt with.

Mr. MCLELLAN. That is correct. It has not been. It needs to be dealt with.

Mr. BAILEY. We need to seek some common ground obviously because it is going to impact greatly either domestic tax structures, marketing procedures, and last, but not least, the thing I have been so concerned with, and that is financial relationships between private enterprise or private concerns and their costs.

Obviously it is an area where we need to do a lot of work.

Mr. EBERLE. I think it is interesting to note though, it is on the U.S. agenda for the ministerial meeting. Such things as the Russian pipeline or a local content bill will preclude us from ever reaching any agreement. Our partners will not go along. We have an interesting job to do between now and November.

Mr. BAILEY. I am a deep and profound believer in free enterprise. I am also a cosponsor of the domestic content law out of sheer frustration and anger. I had an American chairman of a board come to me who had wanted to locate a factory in my district and was very apologetic and felt very bad because I had been in on the ground floor in trying to get this deal arranged.

It meant a lot of jobs and it was very, very important; but did not locate that factory in the United States simply because a foreign government told them that they were going to have trouble doing business there if they indeed did not locate more of their basic manufacturing capacity there.

That foreign government, incidentally, was Canada. Out of sheer anger, I must admit, I don't know if it is the wrong signal to send or not. I do understand the feelings you gentlemen have about it.

I understand your philosophic feelings. I just sometimes think in frustration you wonder what you can do any more, particularly with the Japanese.

It is just like their heads are so hard on certain issues, I don't undestand why they just won't sit down and talk. They talk in circles because they don't want to get to the point because they know darned well they profit too much from not getting to the point. You can't get to first base with them.

Anyway, I want to conclude by thanking you very much for the comments and opinions you expressed. I really think—thank you, Mr. Chairman.

Thank you, gentlemen.

Chairman GIBBONS. Mr. Frenzel?

Mr. FRENZEL. Gentlemen, you have testified in favor of some of the legislation pending before this committee and specifically some of the aspects of it. If reciprocity legislation were not to pass this year, or rather it is a possibility that it will not pass this year, how high on your personal totem poles of priority is this kind of legislation?

How does it compare with other tax or trade legislation? Do you consider it "must" legislation for this year?

Bill?

Mr. EBERLE. Mr. Frenzel, I think our testimony tried to make it clear that we believe at the chamber there is adequate authority under 301 to do most of the things that this bill covers, but apparently this administration feels some of these points need clarification.

This goes to the point, I believe, of adequate enforcement of the U.S. trade laws. If, in fact, this administration needs this and they

will actually enforce it, it will be high on my priority, high on the chamber's priority.

On the other hand, it seems to me that they can do all of these things if they really would take it on with the exception of the high technology authority and possibly some services.

I think the—based upon past history I would have to conclude that there needs to be reasonably high priority in order to get the kind of enforcement that we need and continue the kind of support in the United States for an open trading system.

I am kind of talking along on this one, but I believe that is where we could come out.

Mr. FRENZEL. Thank you.

Mr. NELSON. I would like to say in this regard that I think it is important because it lifts the level of visibility of this issue. It puts a certain, shall we say public spotlight on it, a certain annual reporting requirements. It sends, as we said earlier, the right signals. In addition, it does deal with the direct investment and service issues which were not dealt with in previous existing legislation.

Therefore, I think it is very important. I would, in that regard, say I share Representative Bailey's frustration I think this frustration is shared by many businessmen. We need to have more sort of negotiating weapons or pressures in the arsenal of the Government so that it will better be able to do the job.

As Mr. Eberle said, it is, in the main, unable to do that job now by existing legislation.

Mr. MCLELLAN. I think it is very important, Mr. Frenzel.

On the other side of the coin, I think it will be extremely important in terms of the signals it would send if the Congress didn't take action at this time, given the condition of our international trade and the concern throughout the Nation's industry.

While it is not that big a step, as we all recognize, I do think it would be important, extremely important, if you didn't enact it.

I think you should enact it this year.

Mr. LEVY. I agree with my colleagues. I would like to add that next year is going to be a very busy year for trade issues because the Export Administration Act is up for renewal and the Export-Import Bank is up for reauthorization. As we all know, those are two issues which are critical to the American business community. I think that they will be of major interest to all the groups represented here.

Mr. FRENZEL. Is it your feeling that this issue has to be dispatched before we can get at those?

Mr. LEVY. No.

Mr. FRENZEL. You think if this issue is still pending, we will have difficulty dealing with those issues?

Mr. LEVY. I don't think it has to be dispatched in order to deal with those other issues. I think in terms of everyone's priorities and resources, it is very important to deal with the pending legislation this year. We would then have the resources to focus on the other two important pieces of legislation next year.

Mr. FRENZEL. How about if we could find a GATT legal export incentive to spruce up the DISC? Would that be a high priority?

Mr. LEVY. DISC is a high priority for American business and one of great concern to the U.S. overseas community.

Mr. FRENZEL. Thank you very much for your testimony.

Chairman GIBBONS. Thank you, gentlemen.

Our next witness is Mr. Stephen Koplan of the American Federation of Labor and the Congress of Industrial Organizations.

STATEMENT OF STEPHEN KOPLAN, LEGISLATIVE REPRESENTATIVE, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. KOPLAN. Mr. Chairman, I appreciate being here. We appreciate the invitation to testify today.

I realize that there are other witnesses scheduled to appear after me and the hour is getting late. I will summarize my prepared statement and ask that the full text be included in the hearing record.

Chairman GIBBONS. It certainly will be.

Mr. KOPLAN. Thank you, Mr. Chairman.

The AFL-CIO appreciates this opportunity to present its views on various so-called reciprocity bills.

We are concerned that the approach in such proposals diverts attention from the real problem.

We believe that what is needed desperately is enforcement of existing laws, including remedies provided in the Trade Act of 1974 to establish reciprocity of market access as a key element of U.S. trade policy.

A change in our trade policy can make reciprocity in trade at long last a reality.

With 9.5 percent unemployment, 10.5 million American men and women unemployed—failure to enforce existing law results in greater U.S. imports of manufactured products.

It is our view that existing law empowers the President to act effectively to assure fair trade. However, most administrations lacked the will to exercise that authority and the present administration is no exception.

Rather, it is rapidly outdistancing its predecessors in unilaterally encouraging U.S. imports at the expense of American industries and jobs.

Many times in the past, the AFL-CIO has come before the Congress asking for help to save American industries and jobs.

Too often the responses have been too little or too late or not at all, and year after year the strong, broad-based industrial machine that was America has been weakened and its workers displaced, not because our industries have become obsolete, but because they have been overwhelmed by foreign trade practices.

We appreciate the efforts of those Members of Congress who have introduced bills raising public awareness that our existing trade policies have failed to achieve reciprocity.

However, it is our belief that existing laws covering unfair trade practices, such as dumping and allowing for countervailing duties, were designed to establish fair and reciprocal trade.

In the Trade Act of 1974, a stated purpose of trade agreements according mutual benefits is "to harmonize, reduce and eliminate barriers to trade on a basis which assures substantially equivalent competitive opportunities for the commerce of the United States."

Section 15 of the act provides in pertinent part that the President "may at any time terminate, in whole or in part, any proclamation made under this act."

Mr. Chairman, we believe that section 125, which provides the President with termination and withdrawal authority from trade agreements, if utilized, amounts to adequate authority to address the problem of trade discrimination.

In addition, section 301, as amended, enables the President to take "all appropriate and feasible steps within his power to obtain the elimination of foreign countries' unreasonable trade restrictions or subsidies affecting U.S. commerce."

We believe that section 301 covers trade in services as well as goods.

Numerous bills have been introduced in this Congress that have increased public awareness of the problem of reciprocal market access.

My prepared statement lists numerous of those barriers. I will not take the time to read them into the record now.

However, in our view, as I stated previously, existing law adequately empowers the President to deal effectively with foreign trade barriers to achieve reciprocal market access.

While on the subject of such barriers, let me add, Mr. Chairman, since I note this subject has come up previously this afternoon, that the AFL-CIO endorses H.R. 5133 which provides for a strong response to the critical need for domestic content laws to reestablish a viable U.S. automobile industry.

It is a fair bill designed to take automobiles and related parts off the list of endangered U.S. industries. Its passage is bound to have a positive ripple effect on the entire U.S. economy.

On May 24, AFL-CIO Economic Research Director Rudy Oswald testified before this subcommittee at length regarding several proposals on trade in services and trade in high technology.

Our testimony today will concentrate on H.R. 6773, a reciprocity proposal that is identical in all but one respect with the bill that was reported by the Senate Finance Committee on June 16.

The one difference between the Senate bill and H.R. 6773 is that the House bill fortunately does not include the provision relating to tariff negotiating authority for high technology products.

The AFL-CIO does not consider either version of these proposals to be a real reciprocity bill. At the insistence of the administration, the original Senate bill was watered down so much that the final product is, to quote one Senator, "worse than meaningless."

H.R. 6773, in our view, unfortunately, fails to create a mandate for action and enforcement.

Mr. Chairman, the AFL-CIO has repeatedly called upon the Congress to provide sufficient funds necessary to implement U.S. trade laws.

Just last January we testified before this subcommittee in opposition to proposals cutting back, for example, on the hiring of import specialists to assure that the imports which come into the United States are properly monitored.

Directions to monitor imports become unrealistic when there are not enough import specialists to carry out inspections.

Requirements to establish import injury by identifying the causal connection between imports and the job loss become unfair and unrealistic if the imports are not adequately monitored.

We are pleased that this legislation seeks to secure more information on foreign trade barriers for the American public. Such procedural requirements are an excellent idea, but cannot be implemented unless adequate funding is provided to assure that the directions of the Congress to the executive branch can be carried out.

Otherwise the responsibility, which under the bill is given to the Office of the Special Trade Representative, will effectively be left in the hands of foreign interests and the traders, regardless of the impact on jobs and production in each congressional district.

In addition, the annual STR study of foreign barriers provided in the bill is not linked to any subsequent action by the President.

In summary, the administration has successfully resisted any mandate from the Congress that the Government self-initiate section 301 cases.

The AFL–CIO is opposed to H.R. 6773. Our assessment of the bill is similar to a minority view that accompanied the Senate Finance Committee report on S. 2094 which declared:

> In fact, the bill is mere window-dressing for additional negotiating authority that will give away more of America's substance than could have been given away without the bill.
>
> If this bill becomes law, then the Government of Japan, having once feared that America was on the verge of acting to defend its industrial strength, will heave a sigh of relief that both the executive branch and the Congress have thrown in the towel and settled for a mere gesture.
>
> Even worse, this bill serves as a vehicle for future concessions that we cannot afford.

The fact is, Mr. Chairman, the United States is suffering from rising imports in a wide variety of industrial products, while the economy is moving downward.

This costs jobs, production and America's future development. Unfair trade arrangements encourage the expansion of production abroad for the United States and foreign markets, decimate small businesses unfairly and restrict U.S. exports.

In order to have reciprocal access for U.S. exports, trade policy must encourage efficient U.S. production of goods and services.

Section 201 of the Trade Act provides that the International Trade Commission can recommend relief for an injured U.S. industry. The President has the power to seek relief and to act on recommendations of the ITC. However, the administration has failed to act on behalf of any U.S. industry in a section 201 case, with the exception of clothespins and ferrochrome.

Mr. Chairman, as the subcommittee knows, many countries are not members of the GATT. Yet U.S. trade policy continues unilaterally to abide by GATT principles for these countries, and to allow them privileged entry into the U.S. market.

The continued effect of discriminatory trade standards applied by GATT and non-GATT members alike against U.S. interests at home, creates a continued erosion of U.S. industries.

For example, U.S. firms continue to move to other countries and then export to the U.S. market because other countries require pro-

duction in their market and exports from their markets. U.S. trade policy encourages this erosion.

Often there is not even public discussion of such barriers because they are not widely reported.

Mr. Chairman, the AFL-CIO believes that this Nation cannot afford a U.S. trade policy that substitutes rhetoric for effective programs and action to make reciprocity a reality.

While some reciprocity proposals seek that goal, we believe enforcement of existing law and change in trade policy are long overdue.

[The prepared statement follows:]

STATEMENT OF STEPHEN KOPLAN, LEGISLATIVE REPRESENTATIVE, DEPARTMENT OF LEGISLATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

The AFL-CIO appreciates this opportunity to present its views on various so-called "reciprocity" bills. We are concerned that the approach in such proposals diverts attention from the real problem. We believe that what is needed desperately is enforcement of existing laws, including remedies provided in the Trade Act of 1974 to establish reciprocity of market access as a key element of U.S. trade policy. A change in our trade policy can make reciprocity in trade at long last a reality

In earlier testimony, AFL-CIO President Lane Kirkland called attention to this problem: "Where other nations bar U.S. products through one means or another, the opportunity to enforce U.S. laws to gain access should be encouraged to even out the burdens in the world. Equivalent access to foreign markets is the key."

Subsequently, in February of this year, the AFL-CIO Executive Council stated, "vigorous enforcement of reciprocity provisions of the Trade Act must be undertaken."

With 9.5 percent unemployment—10.5 million American men and women unemployed—failure to enforce existing law results in greater U.S. imports of manufactured products.

It is our view that existing law empowers the President to act effectively to assure fair trade. However, most Administrations lacked the will to exercise that authority and the present Administration is no exception. Rather, it is repidly outdistancing its predecessors in unilaterally encouraging U.S. imports at the expense of American industries and jobs.

Many times in the past, the AFL-CIO has come before the congress asking for help to save American industries and jobs. Too often the responses have been too little or too late or not at all, and year after year the strong, broad-based industrial machine that was America has been weakened and its workers displaced, not because our industries have become obsolete, but because they have been overwhelmed by foreign trade practices.

We appreciate the efforts of those members of Congress who have introduced bills raising public awareness that our existing trade policies have failed to achieve reciprocity. However, it is our belief that existing laws covering unfair trade practices, such as dumping and allowing for countervailing duties, were designed to establish fair and reciprocal trade.

In the Trade Act of 1974, a stated purpose of trade agreements affording mutual benefits is "to harmonize, reduce and eliminate barriers to trade on a basis which assures substantially equivalent competitive opportunities for the commerce of the United States."

Section 125 of the Act provides in pertinent part, that the President "may at any time terminate, in whole or in part, any proclamation made under this Act."

Mr. Chairman, we believe that Section 125, which provides the President with termination and withdrawal authority from trade agreements—if utilized—amounts to adequate authority to address the problem of trade discrimination. In addition, Section 301, as amended, enables the President to take "all appropriate and feasible steps within his power to obtain the elimination of foreign countries' unreasonable trade restrictions or subsidies affecting U.S. commerce." We believe that Section 301 covers trade in services as well as goods.

Numerous bills have been introduced in this Congress that have increased public awareness of the problem of reciprocal market access. The following examples of barriers to trade, taken from practices in a number of different countries, were in-

cluded in the introductory remarks accompanying one of those bills. The examples include:

Restrictive standards and/or inspection requirements on good like cosmetics, food additives, autos, tobacco, medical supplies;

Refusal to accept U.S. certifications on the safety of pharmaceutical exports;

Emissions testing—or other testing—of each imported auto—or other product—rather than testing a sample;

Prohibitions or restrictions on U.S. entry into key service fields like banking, financial services, and insurance;

Linking market access to a requirement to build production facilities in the country;

Requiring such production facilities to maintain a specified level of exports;

"Unexpected" or unannounced delays in unloading freight, including perishable products;

Limitations on the showing of U.S. films;

Discriminatory airport-user charges or less advantageous airport locations for foreign airlines;

Exclusion from airline travel agent reservation systems;

Licensing requirements; and

Local content rules.

However, in our view existing law adequately empowers the President to deal effectively with foreign trade barriers to achieve reciprocal market access.

While on the subject of such barriers, let me add, Mr. Chairman, that the AFL-CIO endorses H.R. 5133, which provides for a strong response to the critical need for domestic content laws to re-establish a viable U.S. automobile industry. It is a fair bill designed to take automobiles and related parts off the list of endangered U.S. industries. Its passage is bound to have a positive ripple effect on the entire U.S. economy.

On May 24, AFL-CIO Economic Research Director Rudy Oswald testified before this Subcommittee at length regarding several proposals on trade in services and trade in high technology. Our testimony today will concentrate on H.R. 6773, a "reciprocity" proposal that is identical in all but one respect with the bill that was reported by the Senate Finance Committee on June 16. The one difference between the Senate bill and H.R. 6773 is that the House bill fortunately does not include the provision relating to tariff negotiating authority for high technology products.

The AFL-CIO does not consider either version of these proposals to be a real reciprocity bill. At the insistence of the Administration, the original Senate bill was watered down so much that the final product is, to quote one Senator: "worse than meaningless."

H.R. 6773 in our view, unfortunately, fails to create a mandate for action and enforcement. For example, even with this bill, Section 301 will continue its track record of virtually no self-initiations by the government and a reliance instead on the petition process.

Mr. Chairman, the AFL-CIO has repeatedly called upon the Congress to provide sufficient funds necessary to implement U.S. trade laws. Just last January, we testified before this Subcommittee in opposition to proposals cutting back on the hiring of import specialists to assure that the imports which come into the United States are properly monitored. Directions to "monitor" imports become unrealistic when there are not enough import specialists to carry out inspections. Requirements to establish import injury by identifying the causal connection between imports and the job loss unfair and unrealistic if the imports are not adequately monitored.

We are pleased that this legislation seeks to secure more information on foreign trade barriers for the American public. Such procedural requirements are an excellent idea, but cannot be implemented unless adequate funding is provided to assure that the directions of the Congress to the Executive Branch can be carried out. Otherwise, the responsibility—which under the bill is given to the Office of STR—will effectively be left in the hands of foreign interests and the traders, regardless of the impact on jobs and production in each congressional district. In addition, the annual STR study of foreign barriers provided in the bill is not linked to any subsequent action by the President.

In summary, the Administration has successfully resisted any mandate from the Congress that the government self-initiate Section 301 cases.

The AFL-CIO is opposed to H.R. 6773. Our assessment of the bill is similar to a minority view that accompanied the Senate Finance Committee report on S. 2094 which declared: "In fact, the bill is mere window-dressing for additional negotiating authority that will give away more of America's substance than could have been given away without the bill. If this bill becomes law, then the government of Japan,

having once feared that America was on the verge of acting to defend its industrial strength, will heave a sigh of relief that both the Executive Branch and the Congress have thrown in the towel and settled for a mere gesture. Even worse, this bill serves as a vehicle for future concessions that we cannot afford."

The fact is, Mr. Chairman, the United States is suffering from rising imports in a wide variety of industrial products, while the economy is moving downward. This costs jobs, production and America's future development. Unfair trade arrangements encourage the expansion of production abroad for the U.S. and foreign markets, decimate small businesses unfairly and restrict U.S. exports.

In order to have reciprocal access for U.S. exports, trade policy must encourage efficient U.S. production of goods and services. Section 201 of the Trade Act provides that the International Trade Commission can recommend relief for an injured U.S. industry. The President has the power to seek relief and to act on recommendations of the ITC. However, the Administration has failed to act on behalf of any U.S. industry in a Section 201 case, with the exception of clothes pins and ferrochrome.

Mr. Chairman, as the Subcommittee knows, many countries are not members of the GATT. Yet, U.S. trade policy continues unilaterally to abide by GATT principles for these countries, and to allow them privileged entry in the U.S. market. The continued effect of discriminatory trade standards applied by GATT and non-GATT members alike against U.S. interests at home, creates a continued erosion of U.S. industries. For example, U.S. firms continue to move to other countries and then export to the U.S. market because other countries require production in their markets and exports from their markets. U.S. trade policy encourages this erosion.

Often there is not even public discussion of such barriers because they are not widely reported. For example, within the past year Mexico, which is not a GATT member, has established new policies and practices that will curb U.S. exporters of computers and data processing equipment. This is a high technology industry already threatened by U.S. failure to insist on U.S. rights to reciprocity with Japan and other GATT members. Further compounding this problem, Mexico now requires import licenses for computers and parts. In addition, Mexico has doubled its tariffs; imposed quotas; required production, research and development in Mexico, and taken other steps to assure that Mexico will be a self-sufficient computer exporter within 5 years. The U.S. Government is aware of these facts, but has not acted.

Mr. Chairman, the AFL-CIO believes that this nation cannot afford a U.S. trade policy that substitutes rhetoric for effective programs and action to make reciprocity a reality. While some reciprocity proposals seek that goal, we believe enforcement of existing law and change in trade policy are long overdue.

Chairman GIBBONS. Thank you, Mr. Koplan.

Mr. Frenzel?

Mr. FRENZEL. Thank you, Mr. Koplan, for your testimony. You have testified in favor of local content and against one of the reciprocity bills the committee is hearing indicating that it had been watered down in the Senate. As that bill was originally introduced in the Senate, was your organization in favor of it?

Mr. KOPLAN. We supported the goal of the legislation, Mr. Frenzel, but we did not endorse the bill as introduced in the Senate.

We certainly support the goal of reciprocity legislation, but it was our position then, as it is our position now, that what is needed is enforcement of existing law.

It is our opinion that existing law now contains adequate remedies for the President to act. We do think the provision in the legislation that calls for increased monitoring is a positive step. This is something, as you know, we have repeatedly called for, monitoring of imports, monitoring of trade barriers, having adequate resources on the part of the Federal Government to be able to do that kind of thing.

With regard to that particular provision, both when the bill was introduced in the Senate and now, that particular provision is one that we think is a positive step and would help.

It is impossible to go into a negotiation without having the information at your fingertips not only in terms of what the global situ-

ation is, but what is the health of our particular industry here in the United States?

What impact will it have on employment in that particular industry in the United States?

So monitoring is something we support.

Mr. FRENZEL. You mentioned Mexico as an example of a non-GATT member which has access to our markets. You point out some barriers which that country has. On the other hand, we have an enormous positive balance of trade with Mexico. I believe it is almost two to one. And do you not think we are getting our fair share there?

Mr. KOPLAN. Well, I think we could probably spend a fair amount of time on that question, Mr. Frenzel. No. I think your question is broad. But I would like to respond for the record, and go through it on a more detailed basis.

Chairman GIBBONS. All right.

[The information follows:]

AFL-CIO RESPONSE

According to annual data, the United States does not "have an enormous positive balance of trade with Mexico." It is not "almost two to one." In 1981, U.S. exports to Mexico totaled $17.8 billion while U.S. imports from Mexico were $13.8 billion—a ratio of 1.29 to 1. (Source: Highlights of U.S. Export and Import Trade, U.S. Department of Commerce, Bureau of the Census, issued in March 1982.)

Moreover, dollar trade figures alone do not provide the complete picture of U.S./Mexican trade. Mexico does not subscribe to the General Agreement on Tariffs and Trade and maintains high barriers to U.S. exports. Yet U.S. imports from Mexico are granted duty-free treatment under the Generalized System of Preferences. In fact, Mexico is one of the five largest beneficiaires of GSP. In addition, although Mexico rejects the GATT, U.S. imports from Mexico are given the benefits of most-favored-nation treatment.

While we recognize Mexico's sovereign right to have a policy of self-sufficiency, and we support continued friendly relations with Mexico, we do not believe that the United States can ignore the differences in trade policies of our respective countries.

Mr. FRENZEL. That is fine. But in general, we can sum up your testimony by saying that the Congress would be better advised to work on local content, than to work with this bill at this time?

Mr. KOPLAN. Yes. May I just add one additional thing?

Mr. FRENZEL. Of course.

Mr. KOPLAN. That is because I—if I heard it correctly, I was in the back of the room. I thought I heard Ambassador Macdonald indicate that, in response to a question, that the administration would like to see Section 124 authority included in this legislation. Did I hear correctly?

Mr. FRENZEL. You did hear correctly.

Mr. KOPLAN. All right. As you know, we have rather strong feelings in opposition to doing that. It just so happens that I have with me a copy of testimony that I gave on that subject in the Senate last week. I would ask that that statement be included along with my prepared statement in the hearing record of this hearing.

Chairman GIBBONS. It will be.

Mr. KOPLAN. I thank you.

[The statement referred to follows:]

Statement of Stephen Koplan, Legislative Representative, American Federation of Labor and Congress of Industrial Organizations

SUMMARY

The AFL-CIO is stongly opposed to S. 1902, a proposal to extend for 2 additional years Presidential tariff negotiating authority under Section 124 of the Trade Act of 1974. Such authority expired on January 3, 1982. We urge that Congress retain its authority over tariff cutting by rejecting renewal of Section 124 authority.

Present economic conditions alone should be reason enough to reject renewal of this authority that would now extend to some 1,500 items that according to the Administration have already "gone through the procedural requirements and are available for negotiations."

The Congress limited Section 124 to 2 years—not to continue tariff cutting, but to provide for housekeeping or cleanup of details that could not be taken care of during the 5-year period of the multilateral negotiations. The time allotted for winding up such details ended last January 3rd. S. 1902 is nothing more than an Administration end-run to give the President a blank check to cut tariffs on at least 1,500 identifiable items, without prior scrutiny by the Congress. The Administration has not provided convincing reasons for renewal of Section 124.

The AFL-CIO believes the bargaining position of the United States will be weakened by this legislation. That is, because other nations will be on notice that the President has nothing to withhold from them, and they can thus demand more while giving less. Passage of S. 1902 will simply encourage increased production abroad for shipment to the U.S. market at the expense of U.S. jobs.

In addition, we appreciate the opportunity to express our opposition to Section 8(c) of S. 2094 which would grant the President for 5 years the authority to reduce or eliminate existing U.S. tariffs on seven high technology items relating to computers and semiconductors. We believe this proposal will encourage U.S. companies to move abroad protected by a variety of tariff and non-tariff barriers, while the U.S. will have unilaterally reduced its tariffs. The result will be the U.S. export of highly skilled jobs.

STATEMENT

The AFL-CIO appreciates the opportunity to share its views in opposition to certain of the tariff bills pending before this Subcommittee.

First, we are strongly opposed to S. 1902, a proposal to extned for 2 additional years Presidential tariff negotiating authority under Section 124 of the Trade Act of 1974. Such authority expired on January 3, 1982. We urge that Congress retain its authority over tariff cutting by rejecting renewal of Section 124 authority.

Present economic conditions alone should be reason enough to reject renewal of this authority that would now extend to some 1,500 items that according to the Administration have already "gone through the procedural requirements and are available for negotiations." The Administration's request for this legislation comes at a time when the unemployment rate in this country is at 9.5 percent—over 10 million men and women. Employment in every manufacturing industry showed a decline in June, with textiles and machinery the biggest losers. American industries are suffering from the combined impact of recession and high imports. Renewal of this authority will only aggravate the serious eroision of this nation's industrial base.

The Tokyo Round's staging of tariff reductions averaging 32 percent over 8 years, starting in 1979, obviously will not be complete for some time. Additional tariff-cutting authority for Presidential negotiations during this staging process will undercut much of the hard-won bargins and concessions from the Tokyo Round. S. 1902 will compound the adjustments already required by the tariff cuts in the Multilateral Trade Negotiations (MTN).

Mr. Chairman, the Congress limited Section 124 to 2 years—not to continue tariff cutting, but to provide for housekeeping or cleanup of details that could not be taken care of during the 5-year period of the mulitlateral negotiations. The time allotted for winding up such details ended last January 3rd. S. 1902 is nothing more than an Administration end-run to give the President a blank check to cut tariffs on at least 1,500 identifiable items, without prior scrutiny by the Congress. Such a proposal will undermine agreements and assurances obtained by private sector groups in the United States who supported the Tokyo Round.

The Administration has not provided convincing reasons for renewal of Section 124. For example, contrary to Administration claims, the Japanese semi-conductor

negotiations have not, in the view of many in organized labor, been "successfully concluded." As a result of the multilateral trade negotiations, the United States and Japan now have a 4.2 percent tariff on semi-conductors. Although Japanese tariffs have thus been reduced, Japanese practices, which effectively require and/or encourage production in Japan for export, have not changed. In addition to existing Japanese non-tariff barriers, U.S exports are stifled by a 17 percent European tariff. However, the Europeans, as well as other countries throughout the world can ship to the United States under the new U.S. tariff rate on semi-conductors of 4.2 percent. The result will be expansion of semi-conductor production in Japan and the European Economic Community (EEC) because the U.S. has reduced its tariffs (unilaterally for Europe). These factors are aggravating a collapsing U.S. semi-conductor market. We believe that what American workers are experiencing in the U.S. semiconductor industry is typical of what other U.S. industries will have in store for them if this legislation is passed.

Mr. Chairman, we are similarly unimpressed with the Administration's claim that the United States will be placed in a weaker negotiating posture at the upcoming General Agreement on Tariffs and Trade (GATT) Ministerial Meeting in November, if Congress fails to provide the blank check for tariff cutting called for by S. 1902. We believe that our bargaining position will be weakened by this legislation. That is, because other nations will be on notice that the President has nothing to withhold from them, and they can thus demand more while giving less.

On October 15, 1981, the AFL-CIO transmitted to United States Trade Representative William Brock (copy attached), its opposition to any further extension of Section 124. However, our opposition was somehow omitted from the communications forwarded to the House Subcommittee on Trade by the Office of STR on October 27, 1981. We urge this Subcommittee to carefully examine each of the 1,500 items reportedly listed in three separate editions of the Federal Register to determine for example, the affect that duty reductions of up to 20 percent of the existing rates of duty will have on employment in those U.S. industries now manufacturing those items. It is imperative that such a study be made by the Congress before any further action is taken on this proposal.

The Administration has asserted that any such tariff cutting is merely intended to get foreign countries who are parties to such negotiations to reduce their tariff barriers to U.S. exports. That argument ignores the fact that under the most-favored-nation doctrine, imports from all over the world unilaterally receive the benefit of such cuts. The result will be to further tip the balance in favor of surges of U.S. imports and accompanying higher U.S. unemployment.

Mr. Chairman, the AFL-CIO believes that passage of S. 1902 will simply encourage increased production abroad for shipment to the U.S. market at the expense of U.S. jobs. We urge that the Subcommittee recommend its rejection.

Second, unlike S. 1902 most of the other proposals listed for Subcommittee consideration call for specific action—often temporary action—by Congress on identified tariffs. On November 5, 1981, the AFL-CIO submitted its views to the Subcommittee in opposition to certain provisons of H.R. 4566, an omnibus tariff bill. Specifically, we objected to those sections relating to the importation of canned tuna, chipper knife steel, pipe organ parts, and to the increase in value limitations applicable to informal entries of noncommercial imported merchandise. In addition, our submission included opposition to S. 231, a proposal to amend the Tariff Act of 1930 to increase from $250 to $600 the amount for informal entry of commercial goods. (Attached is a copy of our November 5, 1981, submission).

Lastly, we appreciate the opportunity to comment on Section 8(c) of S. 2094 which would grant the President for 5 years the authority to reduce or eliminate existing U.S. tariffs—already under 5 percent—on seven high technology items relating to computers and semi-conductors. The AFL-CIO is opposed to granting the President such authority.

In technology, the policies of most governments seek to attract, maintain and develop technology within their nations for defense and economic purposes. If the United States seeks only to reduce foreign practices while the U.S. remains virtually open, the result will be the loss of the basis for the future development of our newest industries.

We believe this proposal will worsen prospects for growth in the U.S. computer industry. The reasons for our opposition are similar to those already given for our disagreement with the action taken by the Administration regarding semi-conductors. This measure would encourage similar results in the field of computers and encourage further harm to the U.S. semi-conductor industry. U.S. companies will be encouraged to move abroad protected by a variety of tariff and non-tariff barriers,

while the U.S. will have unilaterally reduced its tariffs. The result will be the U.S. export of highly skilled jobs.

For example, tariffs in the Philippines and Taiwan are as high as 100 percent on some "electronic components." Should the U.S. and Japan reach an agreement for zero tariffs on such items, the result will be a decrease in U.S. production with an accompanying surge in U.S. imports. In the computer world, Mexico—a relative newcomer—has doubled its tariffs, tightened its licenses and taken other steps to nourish Mexican production. A lowering of modest existing U.S. tariffs will only encourage production of these items abroad.

In summary, the United States cannot afford to pretend that the world is ready to welcome increased U.S. exports, nor can we pretend that lower tariffs negotiated with a few countries abroad will result in benefits for U.S. industry. In the real world of the 1980's, the United States needs realistic trade policies to assure that there will be U.S. industries in the 1990's.

The proposals that we have commented upon fail to take into account the real needs of our nation—a diversified U.S. industrial economy that includes fully competitive high technology and service industries.

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., October 15, 1981.

Hon. WILLIAM BROCK,
Office of the U.S. Trade Representative,
Washington, D.C.
(Attention: Phyllis C. Bonanno).

DEAR AMBASSADOR BROCK: I am enclosing the views of the AFL-CIO on the proposed extension of Section 124 of the Trade Act of 1974 in accordance with the request made to the Advisory Committee on Trade Negotiations.

Sincerely,

RUDY OSWALD,
Director, Department of Economic Research.

Enclosure.

AFL-CIO STATEMENT ON SECTION 124 TARIFF AUTHORITY

The AFL-CIO believes that the President's authority to negotiate tariff cuts according to Section 124 of the Trade Act of 1974 should be allowed to expire for the following reasons:

First, the Tokyo Round's staging of tariff reductions over 8 years, starting in 1979, will not be complete for some time. Therefore, much of the hard-won bargains and concessions from the Tokyo Round will be undercut and avoided by additional tariff cutting negotiations. The bill would compound the adjustments already required by the average total tariff cuts of 32 percent in the Multilateral Trade Negotiations. Those multilateral negotiations for five years did not lead to full cuts because of the compromises. it seem inappropriate to extend the authority into the future.

In short, the United States has given more than it received in most of the tariff rounds for the past three decades. There is no reason to reduce U.S. tariffs even further, while the U.S. and the rest of the world have not even digested the tariff cuts in the Tokyo Round.

Second, the Congress limited Section 124 to two years—not to continue tariff cutting, but to provide for "housekeeping negotiations." The two years are up and the "housekeeping negotiations" to clean up odds and ends at the end of the Tokyo Round should have been taken care of. Section 124 was not to be used to start new negotiations or as renewable authority every two years.

Third, the examples use in the background paper suggest an additional reason for not granting the authority: first, the Japanese semi-conductor negotiations have not, in the view of many in organized labor, been "successfully concluded," as the paper states. The market has fallen out of semi-conductors just as U.S. tariffs are lowest. The Japanese tariffs are down, but Japanese practices, which effectively require and/or encourage production in Japan for export, have not changed. Thus the harmonization of the tariff on semi-conductors between U.S. and Japan may lead to more companies going to Japan and a loss of U.S. competitive strength—in the U.S. Meanwhile, the Europeans have not reduced their 17 percent tariff on semi-conductors. They can ship to the U.S. at the new low rate. The result will be expansion of production in Japan and the EEC, while the U.S. has reduced its tariffs (unilaterally for Europe).

These factors are aggravating a collapsing semi-conductor market.

The Canadian example used in the background paper raises another problem. AFL-CIO representatives have protested the U.S. attack on Canadian practices on investment, Canadian production requirements, etc. Those practices are not going to go away because of tariff-cutting negotiations. For the U.S. to offer new tariff concessions while the Canadians are encouraging U.S. production capaicity to move North, however, is to assault the U.S. economy further. Thus, it is one thing to oppose trying to pick a fight with Canada, as we have, even though their policies may be disadvantageous to the U.S. But it is another to offer them tariff reductions at a time when the U.S. supposedly is not feeling happy about the kinds of actions the Canadian government has taken. Certainly we don't want to encourage investment in Canada for sale in the U.S. We want fair trade.

Fourth, there are reports about negotiations with many other countries and very little information about them. For example, there are reports about bilaterals in the Far East, where countries like Taiwan and the Philippines have tariffs as high as 100 percent on electronic items, for example. The private sector was not fully apprised of such negotiations, and still does not know what progress has been made. If any progress is made with one of these countries, and the U.S. lowers a tariff rate for a product, it lowers that rate for all countries under the "most favored nation" doctrine, not just one country. While the overall reductions are limted in depth. the cut in one item could have major consequences for that product.

Additional tariff-cutting actions would tend to further undermine the industrial base and act as a further invitation to ship to the U.S. market from relatively closed markets abroad.

Thus the prospect of mutual benefit from further tariff cuts is unlikely. The European barriers and recession will retard export gains. Other nations have higher barriers and/or limited funds.

Instead, the U.S. trade balance, which has been in deficit for five years, would be worsened. The deficit range has moved to between $30 billion and $40 billion a year. In August, the deficit reached $5.6 billion, as sharp rises in manufacturers, such as steel, added to other imports. To encourage more imports at this time through tariff cutting would worsen prospects for changing the deficit.

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., November 5, 1981.

Hon. JOHN C. DANFORTH,
Chairman, Subcommittee on International Trade, Senate Finance Committee, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN DANFORTH: The AFL-CIO appreciates this opportunity to submit views to the Subcommittee on International Trade concerning H.R. 4566, as well as on S. 231.

H.R. 4566 includes many provisions for reducing tariffs. The Congressional Budget Office has estimated that this bill will cost the Treasury Department $6.6 million annually in lost revenues. In general, the AFL-CIO believes that unilateral duty reduction bills hurt industry at home and U.S. chances for successful trade negotiations to encourage potential export expansion. Specific objections to provisions of the bill follow:

Section 2 of H.R. 4566 would amend the article description of the Tariff Schedules which provides for a tariff-rate quota on imports of tuna packed in airtight containers. The effect of the change will be that shipments from the U.S. insular possessions will not be included in determining the extent to which the quota has been filled. The National Marine Fisheries Service is the agency responsible for the administration of the quota. The effect of the bill would enlarge the amount of tuna imports allowed into the U.S. mainland.

Unions affiliated with the AFL-CIO who represent cannery workers object to the undercutting of jobs and production through low-wage imports in this fashion. They believe the further destruction of U.S. cannery jobs and U.S. cannery production will give importers a virtual monopoly of the U.S. market. The AFL-CIO therefore opposes Section 2.

Section 4 would unilaterally reduce the duty on imports of chipper knife steel, not cold formed, which is now undergoing staged tariff reductions under the multilateral trade negotiations. Chipper knife steel is a special steel for knives which chop wood into pulp, chips and other paper and lumber products. U.S. producers of this steel have been trying to make sure that U.S. production continues. Recently, layoffs and plant shutdowns in the steel industry have contributed significantly to the increased problems for manufacturing of chipper knife steel.

The steel, which is being imported, is subsidized by foreign governments and the operational effect of foreign tax laws. The result is that the foreign steel has an unfair advantage. To give it an added advantage by further tariff reductions adds insult to injury.

The dependence on foreign chipper knife steel is already at a perilously high point—over 70 percent. Once the U.S. production is finally destroyed the price of chipper knife steel from abroad can rise to any height at all and no U.S. production will be available.

The AFL-CIO believes that the U.S. should not undercut the potential for a healthy U.S. industry. U.S. jobs, an effective negotiating posture and an end to encouraging the import of subsidized products would be aided by a rejection of Section 4.

Therefore, the AFL-CIO opposes Section 4 of H.R. 4566.

Section 7 would provide permanent duty-free treatment with respect to parts of pipe organs. The United Furniture Workers of America has informed us that removing tariffs on organ parts would create unfair competition for the manufacturing of organ parts as well as the organ. In addition, the quality of the pipe organ would be adversely affected by dependence on foreign parts. The AFL-CIO therefore opposes Section 7.

Section 11 amends the article description of item 869 of the Tariff Schedules to increase the value limit on informal entries of noncommercial imported merchandise. The bill would allow a traveler to import between $600 and $1,000 into the U.S. with only a 10 percent duty for the aggregate amount above $600. A major purpose for this legislation is allegedly to ease the administrative process for the U.S. Customs Service. However, the AFL-CIO has repeatedly been assured that Customs has computer facilities and the expertise to monitor imports into the United States. The expand use of informal entry procedures could undercut this commitment as well as the effectiveness of many trade laws and agreements.

Therefore, the AFL-CIO opposes Section 11 of H.R. 4566.

In sum, we urge that the Subcommittee recommends striking Sections 2, 4, 7 and 11 from H.R. 4566.

The AFL-CIO also opposes S. 231, which raises the value of commerical imports eligible for informal customs entries from $250 to $600. This change would make import monitoring even more difficult for many import-sensitive industries.

Under informal entry procedures, the customs officer releases the articles to the importer without independent verification. The payment of duty is based merely on the shipping documents and self-serving statements contained therein. Thus an increase in the ceiling to $600 would encourage evasion of duties by means of inaccurate or even false shipping documents.

Imports are valued at the foreign port of exportation—not on the basis of U.S. domestic prices. Thus $600 worth of foreign shoes, garments, handbags, nuts, bolts or screws, or many other low-value, but large quantity import-sensitive items could amount to a substantial quantity of imported products. In addition, multiple shipments could collectively consist of a large influx of unrecorded entries. Import monitoring of import-sensitive items is a necessity not only to assure compliance with U.S. trade laws, but also to measure promptly the impact of imports for future U.S. trade negotiations so that import relief can be provided when warranted.

Failure to adequately monitor such imports will be injurious for U.S. domestic production with a resultant loss of U.S. jobs.

This proposal has been made to the Congress many times in the past, but has been rejected. We urge that the Subcommittee follow that practice by recommending that S. 231 be rejected.

Sincerely,

RAY DENISON,
Director, Department of Legislation.

Mr. FRENZEL. Thank you very much.

Chairman GIBBONS. Mr. Bailey.

Mr. BAILEY. Thank you, Mr. Chairman.

Mr. Koplan, I want to thank you very much for, I think, putting your finger on something that's been rather consistent today. Although the ultimate conclusion is different, if you compare the objections you have to the legislation with the very weak endorsement given the legislation by the business groups that were here, they obviously, and I think you obviously, feel very, very strongly

that the top priority be that the United States of America should have right now is to enforce vigorously existing trade laws. Would that be correct?

Mr. KOPLAN. That is correct, Mr. Bailey.

Mr. BAILEY. And that there are existing laws and existing practices and existing vehicles available that, should the administration vigorously pursue a proper application of those existing laws, that perhaps 6773, well intentioned as it may be, and I think it is well intentioned, would not be necessary. That there is a danger that it might mislead, as a matter of fact, some of our friends overseas into thinking that we are not serious.

And it might mislead a great many people in this country into thinking that we had actually done something which we really hadn't; is that right?

Mr. KOPLAN. That's right. Your question brings to mind a comment that a Senator that I once worked for—I was once an employee of the Senate—said that if we have a bill that is called tax reform, no matter what comes after the title of the bill, everyone can go home and say they voted for tax reform.

We are concerned that a bill that, as I quote a Senator who worked on the bill termed "worse than meaningless," yet because it is titled "reciprocity," will lull people into thinking that the problem has been taken care of with the passage of such legislation. However, we don't see this as a bill that will in fact achieve the goal of reciprocity. We just don't see the specifics of this legislation as accomplishing that.

Mr. BAILEY. Well, I must say that I happen to agree with you. I commented earlier, we had testimony from the administration, as a matter of fact we had Mr. Olmer on the record admitting essentially to the same thing—would have to go back and get specific comments.

But words to the effect he agreed with me in that the bill really didn't go far enough or do enough. I think, however, the hearing process, maybe we can get a lot of these things out. I think the danger is going to be as you say, the tendency for some people to say, Well, geez, how can you be against it?

By the same token, to turn around on the propaganda side and, as we pat our Japanese friends and our German friends and our Italian friends and our French friends and our Swedish friends on the back, et cetera, say: "We really didn't do anything to upset any applecart here."

This really doesn't mean that much. What does it change? Well, it doesn't really change that much. I think you have put your finger on that fact. It is going to be a very difficult bill, incidentally, to vote against, obviously. I am not against the darn thing. But you know, I love Mr. Frenzel, I dearly love him, I do, but I have to agree with your analysis. I think on the record I would like to go on the record with agreeing with you, it really doesn't change much of anything.

We really need these laws enforced. That is all we have needed for years. I will yield to the gentleman in a minute. But I think we ought to be honest about that. I think the business testimony was very much, really, they came down on the plus side, but not very

strong. I think they are really backing up what you have said here today.

And it is good to see the AFL and CIO and the business side together. Because I know sometimes you disagree.

Mr. KOPLAN. I better go back and check what I have said.

Mr. BAILEY. On local content, I also have to say that I don't know what else we can do. I think we have just reached our wits' end. What we are doing is something that we are being honest about, no one else is. It is that simple. You go to another country.

What they do is they use, they violate the spirit and meaning and the good faith intentions of the antisubsidy provisions of the GATT. Or they use some kind of export credit financing. Or they use some kind of financial relationship. Or they don't let you market the product.

What we do in America, we just sort of do it sort of honestly. We say, fine. You folks are doing all these things to us, we don't have—it is protectionist. I think that is exactly what it is. I think we would be dishonest if we didn't admit that. It is a case of putting your foot down and saying, look, we don't like to do business this way either, but something has to be done.

We can't continue to export our jobs, everything but our safety standards, everything but our wage basis, you know. We give the jobs and the capital and the technology away. It is just a little bit unfair. I want to thank you very much for your testimony, particularly the way that it was presented. I think it is very reasonable. I think the criticism is apropos, and I think the position is well taken. I would like to thank you for the statement.

Mr. KOPLAN. Thank you for your comments, Mr. Bailey.

Chairman GIBBONS. Thank you, sir.

Mr. KOPLAN. Thank you, Mr. Chairman.

Chairman GIBBONS. Our next witness is Mr. Julian B. Heron, Jr.

STATEMENT OF JULIAN B. HERON, JR., PARTNER, HERON, BURCHETTE & RUCKERT

Mr. HERON. Thank you, Mr. Chairman, members of the committee. With the understanding the full statement will be set forth in the record, I will proceed to summarize it.

It is indeed appropriate that your committee consider reciprocal trade and market access legislation. Clearly action is needed in the agricultural sector. Before addressing specific legislation, it is believed worthwhile to state clearly where agriculture finds itself.

In recent years agriculture has been the bright spot in our trading picture. It has accounted for consistent trade surpluses and has assisted magnificently in reducing our growing deficit. This trend is beginning to reverse itself as a result of aggressive action and predatory practices on the part of our trading partners. Any country, including the United States, has the sovereign right to take unilateral action in trade matters. The question always to be answered is what unilateral action is in our best interest?

The U.S. choice for years has been to support and follow the rules of the General Agreement on Tariffs and Trade. While there may be some disagreement as to whether or not the United States has always observed all of the rules, there can be no disagreement

that the United States has exercised its leadership in conforming with GATT in spirit and practice. Unfortunately, our major trading partners have not done so.

To put this in perspective, a few examples will illustrate it well. If one looks at the dispute settlement process in GATT, it is possible to see that it is not effective for solving agricultural disputes in a timely fashion. The United States currently has a number of agricultural disputes pending in GATT. Most are against the European Economic Community. The EEC is to be congratulated on its ability to continually draw out and delay resolution of these disputes. We must all keep in mind that delay or maintenance of the status quo benefits the EEC. As this committee knows, the subsidies code, authorized initially by this committee, has specific timetables. In the first subsidies code case, which involves wheat flour, the deadlines have been ignored.

The United States has pushed hard to try and resolve the current dispute involving raisins, canned peaches, and pears. Nevertheless, the European Community has been successful in sustaining numerous delays. Just recently the panel selected to hear this case was delayed from a July hearing to a September hearing. As a practical matter, this means that raisin exports to the EEC will be interrupted for another season.

The same is true in the longest standing dispute. That is the one involving the Mediterranean preferences on citrus fruit. This was the first case filed under section 252. It has been renewed under section 301. For the past two GATT Council meetings there has been a deliberate effort on the part of GATT members to prevent the United States from obtaining a panel to seek a resolution of this dispute. The matter will not come before the GATT Council now until fall. Certainly, it cannot be said that GATT is able to resolve disputes when it will not even allow a panel to be formed.

These examples serve to illustrate and document the need for this committee to act affirmatively. Please let me take the opportunity to make it clear that this is not a criticism of Ambassador Block. He has been aggressive and is doing a splendid job. The executive branch simply cannot do it alone. The legislative and executive branches must work in concert with the direction coming from the Congress. The private sector must also be closely involved.

While the easiest action to take is that of closing the U.S. borders, it is not the most productive. Closing our borders will inflict injury both on producing countries and on American interests. It will also increase costs domestically. The best example of this is the quotas which the Japanese maintain on fresh oranges and beef. These quotas injure our orange and beef industries and make prices of these products to the Japanese extremely high. As this committee well knows, the Japanese have remained adamant on these quotas.

It is suggested that it would be more productive for the United States to exercise its sovereignty through the use of direct and indirect export subsidies rather than close our markets. Through the use of subsidies it would be possible to keep our work force employed and regain markets taken from us by foreign practices, especially subsidies. The European Economic Community has in-

creasingly taken markets from the United States through the use of excessive subsidies on targeted markets.

It may be a surprise to learn that this year the EEC is expected to export more agricultural products than the United States. This will be accomplished through the use of subsidies. The EEC has undertaken its subsidy practice to move itself from its common agricultural policy to a common export policy. This has been necessitated by its domestic policy of encouraging self-sufficiency first and overproduction second in virtually all commodities.

The EEC has used the subsidies to increase the value of its exports from $400 a ton to $1,225 a ton between 1970 and 1980. Thus the EEC has benefited its domestic economy through exporting high value items, whereas the United States tends to export low value agricultural items. U.S. unit values rose from $170 to $265 a ton during the same period.

If the United States is to maintain its export markets for agricultural products, then it must follow the rules of trade being established by the Europeans and the Japanese. The United States cannot expect to maintain a healthy agricultural economy while it is the sole observer of GATT rules. Had the United States maintained the same share of the world's high value trade that it enjoyed in 1970, it would be exporting an additional $9 billion agricultural commodities resulting in an additional 350,000 jobs.

Thus, this committee's action and guidance is needed. The United States has never had an established export policy. Only recently did President Reagan establish an agricultural export policy. One of its essential priorities, which relates to this hearing, is that the United States must respond aggressively to world trade barriers and unfair trade practices in order to improve and strengthen our economic health.

It is believed that export subsidies will benefit the U.S. economy far more than restricting imports. This committee is urged to act affirmatively. The Senate has already begun to act. On July 16, 1982, the Senate Agriculture Committee adopted an amendment to the reconciliation bill which would instruct the Secretary of Agriculture to use at least $175 million but not more than $190 million of funds of the Commodity Credit Corporation for interest reduction and export subsidy payments.

If we were to engage in an aggressive program tied to increasing exports of our high value products, it is believed that an additional 350,000 Americans would be employed in processing, marketing, and handling agricultural products. This is a far more desirable method of meeting the predatory practices of our friends overseas than closing our markets to them. It also would have the effect hopefully of causing other countries in the world, by the time of the GATT ministerial meeting this fall, to be seeking a reform in rules that would come closer t , the U.S. interests.

H.R. 6773 would amend U.S. trade law in an effort to insure access to foreign markets for U.S. exports equivalent to that available in the United States for products of other countries. It is hoped that this committee will continue its interest in support and developing trade policy, maintaining market access and encouraging U.S. exports. Agriculture has very much appreciated the interest that this committee has shown on its behalf, and especially the in-

terest that has been demonstrated with respect to the pending 301 cases.

It is believed that continued cooperation between the private sector and Congress will serve to benefit the U.S. agricultural exports.

Thank you very much, Mr. Chairman. I will be pleased to respond to any questions that you or the committee may have.

[The prepared statement follows:]

STATEMENT OF JULIAN B. HERON, JR., HERON, BURCHETTE & RUCKERT

Mr. Chairman and members of the Committee, it is a pleasure to be before you again. Thank you very much for your invitation to appear. It should be noted that I am appearing at the invitation of the Committee and not in my capacity as Chairman of the United States Agricultural Export Development Council, a member of the Agricultural Policy Advisory Committee, or on behalf of any agricultural client.

It is indeed appropriate that your Committee consider reciprocal trade and market access legislation. Clearly action is needed in the agricultural sector. Before addressing specific legislation, it is believed worthwhile to state clearly where agriculture finds itself.

In recent years agriculture has been the bright spot in our trading picture. It has accounted for consistent trade surpluses and has assisted magnificently in reducing our growing deficit. This trend is beginning to reverse itself as a result of aggressive action and predatory practices on the part of our trading partners. Any country, including the United States, has the sovereign right to take unilateral action in trade matters. The question always to be answered is what unilateral action is in our best interest. We must be careful to seek the right answer and act with conviction based upon it.

The United States choice for years has been to support and follow the rules of the General Agreement on Tariffs and Trade (GATT). While there may be some disagreement as to whether or not the United States has always observed all of the rules, there can be no disagreement that the United States has exercised its leadership in conforming with GATT in spirit and in practice. Unfortunately, our major trading partners have not done so. While we have essentially lived by the rules, they have taken advantage of our unwillingness to engage in predatory practices. It is now time to reexamine the rules we apply to ourself.

In order to put this in perspective, a few brief examples will serve to illustrate it well.

If one looks at the dispute settlement process in GATT, it is possible to see that it is not effective for solving agricultural disputes in a timely fashion. The United States currently has a number of agricultural disputes pending in GATT. Most are against the European Economic Community.

The EEC is to be congratulated on its ability to continually draw out and delay resolution of these disputes. We must all keep in mind that delay or maintenance of the status quo benefits the EEC. As this Committee knows, the Subsidies Code, authorized initially by this Committee, has specific timetables. In the first Subsidies Code case, which involves wheat flour, the deadlines have been ignored.

The United States has pushed hard to try and resolve the current dispute involving raisins, canned peaches and pears. Nevertheless, the European Community has been successful in sustaining numerous delays. Just recently the panel selected to hear this case was delayed from a July hearing to a September hearing. As a practical matter, this means that raisin exports to the EEC will be interrupted for another year. This is unfair to farmers who have brought on their production in expectation of open markets.

The same is true in the longest standing dispute. That is the one involving the Mediterranean preferences on citrus fruit. This was the first case filed under Section 252. It has been renewed under Section 301. For the past two GATT Council meetings there has been a deliberate effort on the part of GATT members to prevent the United States from obtaining a panel to seek a resolution of this dispute. The United States has tried diligently to obtain a panel. It has twice been blocked. The matter will not come before the GATT Council now until fall. Certainly, it cannot be said that GATT is able to resolve disputes when it will not even allow a panel to be formed.

These examples serve to illustrate and document the need for this Committee to act affirmatively. Let me make it clear that this is not a criticism of Ambassador

Brock. He has been aggressive and is doing a splendid job. The Executive Branch simply cannot do it alone. The Legislative and Executive Branches must work in concert with the direction coming from the Congress. The private sector must also be closely involved. Clearly it is time for the United States to act.

While the easiest action to take is that of closing the U.S. borders, it is not the most productive. Closing our borders will inflict injury both on producing countries and on American interests. It will also increase costs domestically. The best example of this is the quotas which the Japanese maintain on fresh oranges and beef. These quotas injure our orange and beef industries and make prices of these products to the Japanese extremely high. As this Committee well knows, the Japanese have remained intransigent on these quotas despite the trade surplus that they enjoy with the United States.

It is suggested that it would be more productive for the United States to exercise its sovereignty through the use of direct and indirect export subsidies rather than close our markets. Through the use of subsidies it would be possible to keep our work force employed and regain markets taken from us by foreign practices, especially subsidies. The European Economic Community has increasingly taken markets from the United States through the use of excessive subsidies on targeted markets.

It may be a surprise to learn that this year the EEC is expected to export more agricultural products than the United States. This is done through the use of subsidies. The EEC has undertaken its subsidy practice to more itself from its Common Agricultural Policy to a Common Export Policy. This has been necessitated by its domestic policy of encouraging self-sufficiency first and overproduction second in virtually all commodities.

The EEC has used the subsidies to increase the value of its exports from $400 a ton to $1225 a ton between 1970 and 1980. Thus the EEC has benefitted its domestic economy through exporting high value items whereas the United States tends to export low value agricultural items. U.S. unit values rose from $170 to $265 a ton during the same period.

If the United States is to maintain its export markets for agricultural products, then it must follow the rules of trade being established by the European and the Japanese. The United States cannot expect to maintain a healthy agricultural economy while it is the sole observer of GATT rules. Has the United States maintained the same share of the world's high value trade that it enjoyed in 1970, it would be exporting an additional $9 billion resulting in an additional 350,000 jobs.

Thus, this Committee's action and guidance is needed. The United States has never had an established export policy. Only recently did President Reagan establish an agricultural export policy. This policy was announced on March 22, 1982. One of its essential priorities, which relates to this hearing, is that the United States must respond aggressively to world trade barriers and unfair trade practices in order to improve and strengthen our economic health.

None of these comments is in any way critical of Ambassador Brock or his staff or previous trade ambassadors. They have all tried to maintain GATT and establish the rules of trade. Our allies, operating through and their sovereign authority, have refused to cooperate. The United States must now recognize this and act.

It is believed that export subsidies will benefit the U.S. economy far more than restricting imports. This Committee is urged to act affirmatively. The Senate has already begun to act. On July 16, 1982, the Senate Agriculture Committee adopted an amendment to the reconciliation bill which would instruct the Secretary of Agriculture to use at least $175 million but not more than $190 million of funds of the Commodity Credit Corporation for interest reduction and export subsidy payments.

If we were to engage in an aggressive program tied to increasing exports of our high value products, it is believed that an additional 350,000 Americans would be employed in processing, marketing and handling agricultural products. This is a far more desirable method of meeting the predatory practices of our friends overseas than closing our markets to them.

The proposed Reciprocal Trade and Investment Act of 1982, H.R. 6733, would amend U.S. trade law in an effort to ensure access to foreign markets for U.S. exports equivalent to that available in the U.S. for products of other countries. The bill would effectuate this purpose through amendments to Title III of the Trade Act of 1974, as amended (hereinafter the Act). Other provisions of the bill emphasize the importance to the U.S. economy of trade in high technology products and services.

Section 4 of the bill which amends Title III of the Act both adds new language and clarifies existing statutory authority. A new subsection (2) has been added to section 301(a) to make explicit the President's authority to take action against products other than those involved in the foreign act, policy or practice identified. While

implicit authority already existed for such action by the President, this addition makes unmistakably clear the breadth of the President's powers to redress trade practices which are detrimental to the United States.

The bill, by substituting the word "goods" for the word "product" in the current law, would make certain the inclusion of agricultural products and other primary unprocessed products within the scope of section 301. Again, this modification of law only makes explicit what has always been the implicit authority of the President.

The new definition set forth in subsection 301(d)(3) for the word "unreasonable" may confine the meaning of that term and deny the President the power to act where a foreign action arguably falls outside the definition's scope. The proposed definition of "unreasonable" is narrower than the description of that term in the 1979 legislative history where "unreasonable" was stated as including actions "which nullify or impair benefits accruing to the United States under trade agreements or which otherwise restrict or burden U.S. commerce." Sen. Rep. No. 96-249 at 234-5. The use of the phrase "unfair and inequitable" would require that a foreign practice fulfill both criteria to be actionable. Foreign practices may be detrimental to the U.S., however, when either unfair or inequitable. It is suggested that "or" be used in place of "and". The more precise definition proposed currently is likely to engender controversy and enable the countries which are the object of section 301 actions to raise arguments regarding the scope of U.S. law.

Section 302 is amended to provide USTR the power to self-initiate investigations after appropriate consultations under section 135. While this change is a necessary addition, it is unrealistic to expect the U.S. government to frequently self-initiate investigations given the international political sensitivity involved in any government initiated action. The full and active participation of the relevant industry will continue to be vital to most, if not all, actions in this area.

The substitution of a summary publication requirement in lieu of the current publication of entire petitions in the Federal Register should suffice to preserve the interest of public notice. The current requirement only became burdensome, however, as petition requirements necessitated ever longer and more complex petitions to be filed.

Section 303 is amended to permit the USTR to delay consultations with the foreign country involved until 90 days after the date a petition is accepted and a decision made to institute an action. I agree with the intent of this provision which is to ensure that USTR has time to develop an adequate basis for proceeding internationally. I am glad to see that the Committee has adopted this provision which I first proposed in December 1981 in hearings before this Committee. The extension of time preceding consultations also should enable the affected industry the opportunity to complete the record so that a meaningful evaluation can be made by the Section 301 Committee.

The amendment of section 305 is an equally important change. Many domestic industries have been concerned that proprietary business information submitted during or preliminary to a section 301 action might not be adequately protected as confidential. By specifically exempting information demonstrated to be confidential from the scope of the Freedom of Information Act, section 305 does much to alleviate these concerns.

More important, perhaps than any of the amendments to Title III, however, is the new section 181. Congress is rightfully anxious that the United States has been disadvantaged because of its adherence to the obligations of the GATT while major trading partners instituted practices and policies either inconsistent or in violation of the provisions of that Agreement and its ancillary codes. This legislation is intended to restore equal access to foreign markets for American business and industry. A statement of policy, however, is not enough. Continued oversight of U.S. policy formulation and implementation by the responsible Congressional committees if vital. This is the importance of section 181. Only to the extent that Congress is fully informed and actively participates in U.S. trade policy can the objective of equal treatment be achieved. Consequently, the reports and estimates required under section 181 must be timely. In fact, simpler and more concise, but prompter reports can be much more valuable than lengthy annual reports issued long after the relevant events have transpired. Section 181 should be supplemented by adding to the existing reporting requirements of section 306 a requirement that USTR indicate what it intends to do in circumstances where no progress has been made toward eliminating or alleviating the impact of the practice in issue. Without such information, the responsible Congressional committees may lack information regarding what types of foreign actions the USTR considers inappropriate for review or action.

It is hoped this Committee will continue its interest and support of developing trade policy, maintaining market access and encouraging United States exports. Agriculture has very much appreciated the interest this Committee has shown on its behalf and especially the interest that has been demonstrated with respect to the pending 301 cases. It is believed that continued cooperation between the private sector and Congress will serve to benefit United States agricultural exports.

Thank you, Mr. Chairman. I will be pleased to respond to any questions that you or your Committee may have.

Chairman GIBBONS. Thank you. I, like you, would look forward to seeing some new and better rules in the GATT and vigorous enforcement of the rules. I know what common agricultural policy has done to areas, particularly in the Caribbean, where they are so very dependent on sugar. I appreciate your testimony.

Mr. Frenzel.

Mr. FRENZEL. One of the things the common agricultural policy has done has made a big market for corn gluten in Europe for us. As I understand it, our balance with the EEC on agricultural commodities is still pretty heavily positive, isn't it?

Mr. HERON. That is right, Mr. Frenzel. As you know, and correctly stated, the corn gluten market is a good market. But the Europeans just recently have begun to move on mill feed. It is believed by many observers that this is just the first step to moving on corn gluten and other items. The Congress was very——

Mr. FRENZEL. I believe it, too.

Mr. HERON. I beg your pardon?

Mr. FRENZEL. I say I believe it, too.

Mr. HERON. We are all very concerned about it. We appreciate the support of Congress this past spring on that.

Mr. FRENZEL. You talked about expanding our markets abroad to the percentage of world trade. One of the problems, of course, is that we have shot ourselves in the foot, the leg, and perhaps in the tummy, as well, in being unwilling to sell in the quantities that are required to the largest buyer of agricultural commodities in the world.

Do you have a position on that?

Mr. HERON. I am not sure I understood your question, sir.

Mr. FRENZEL. Well, we seem to be applying a de facto embargo against Russia because we are unwilling to go beyond the limits of the current agreement, or to expand or extend that agreement, or to remove it so that people can sell in excess of the agreement.

In addition, buyers such as Russia have no reason to believe we would be reliable suppliers in the future, since our contracts may or may not be good until tomorrow. Do you have a thought about that?

Mr. HERON. Yes, sir. Certainly, the overwhelming majority of agriculture in the United States supports renewal, or at least a new long-term agreement, and hopefully, one that will include processed agricultural products.

Mr. FRENZEL. Thank you very much.

Chairman GIBBONS. Thank you, sir.

Mr. HERON. Thank you.

Chairman GIBBONS. Our next witness represents a Coalition of Service Industries, Mr. John E. Hunnicutt.

STATEMENT OF JOHN E. HUNNICUTT, SECRETARY-TREASURER, PEAT, MARWICK, MITCHELL & CO., ACCOMPANIED BY RICHARD R. RIVERS, REPRESENTING THE COALITION OF SERVICE INDUSTRIES, INC.

Mr. HUNNICUTT. Thank you, Mr. Chairman.

Chairman GIBBONS. Accompanied by Mr. Rivers.

Mr. HUNNICUTT. Thank you, Mr. Chairman. I am John E. Hunnicutt, secretary-treasurer of the Coalition of Service Industries, Inc., and a principal in Peat, Marwick, Mitchell & Co. With me this afternoon is the coalition's counsel, Richard R. Rivers of Akin, Gump, Strauss, Hauer & Feld. It is my pleasure to appear before you this afternoon on behalf of the coalition to testify on several bills concerning trade in services—H.R. 5383, H.R. 5596 and H.R. 6773—which are pending before this subcommittee.

I will highlight my testimony, Mr. Chairman, since you are going to put the entire statement in the proceeding.

Chairman GIBBONS. Yes, sir, it will all be in the record.

Mr. HUNNICUTT. I will not elaborate on the importance of the service sector to the U.S. economy. The coalition has commented on that subject in earlier testimony before this subcommittee.

Your bill, Mr. Chairman, includes in its findings a number of the statistics with regard to the contribution of the services sector to the U.S. economy. I would like to point out, however, that employment in the consumer, financial and service industries has moved above the job total in the production industry for the first time in the history of the American economy, according to the Labor Department.

This is not to deny the overwhelming importance of our manufacturing sector and interdependence and in many cases simple dependence of the service sector upon the health and vitality of those goods producing industries.

On the three bills covering services now before this subcommittee the coalition has testified its strong support, with two exceptions which I will mention shortly, for H.R. 5383 before this subcommittee two months ago. Our views on this bill have remained constant. H.R. 5596, the Trade and Investment Equity Act of 1982, as modified by H.R. 6773, along with their counterpart in the Senate, S. 2094, are bills which address services and which the coalition supports as well.

These three bills—H.R. 5596, H.R. 6773, and S. 2094—have also been central to this year's trade "reciprocity" debate. Since the coalition has not publicly stated its views on the "reciprocity" bills nor on the general topic of trade reciprocity, it is appropriate to do so in this forum and we hope will be helpful in your subcommittee's further consideration of these bills.

On reciprocity, our coalition has been concerned with the concept of reciprocity as the term was bandied about earlier this spring. The term reciprocity at that time was being used in a negative protectionist sense. When applied to international trade it has a narrow restrictive effect, and can lead to retaliation and spiraling downturn in world trade. Sectoral reciprocity can also lead to absurd and meaningless actions.

Accordingly, many members of our coalition would be exceedingly cautious about seeking either sectoral or bilateral reciprocity in order to gain their export ends, simply because these firms may have U.S. interests which could be damaged were the search for sectoral reciprocity to lead to trade retaliation. Our coalition therefore opposes enacting into the U.S. trade laws reciprocity in this narrow, sectoral or bilateral sense.

By contrast, the coalition strongly supports reciprocity in the traditional, liberal or global context. Reciprocity in this sense refers to a mutually advantageous exchange of bargained for concessions, and it has been the cornerstone of U.S. trade policy and the General Agreement on Tariffs and Trade throughout the postwar period. It encompasses the trade principles of unconditional most-favored-nation treatment, national treatment, and a negotiated balance of concessions.

H.R. 6773, and its Senate counterpart as recently revised, S. 2094, and H.R. 5383 accord generally with the liberal or global concept of reciprocity, and the coalition supports these bills in this regard. H.R. 5519, the Service Industries Commerce Development Act of 1982, which is pending on referral to your subcommittee from the Energy and Commerce Committee, is also satisfactory on this point.

The coalition's first concern is with passage of legislation that will grant the President negotiating authority on services, signal to our trading partners the importance the U.S. Congress attaches to services, put services on an equal footing with goods in the U.S. trade laws, and strengthen section 301 as a remedy for dealing with services trade problems. We believe that either H.R. 5383, with some modification, or H.R. 6773 could accomplish this objective.

H.R. 5383, with the deletion of section 6 which adds a subsidization and unfair pricing provision to section 301 and section 8 which concerns independent regulatory agencies, is a fine services bill, passage of which the coalition would heartily support. H.R. 6773 enjoys the support of the coalition.

Thank you.

[The prepared statement follows:]

STATEMENT OF JOHN E. HUNNICUTT, COALITION OF SERVICE INDUSTRIES, INC.

Good afternoon, Mr. Chairman, I am John E. Hunnicutt, Secretary/Treasurer of the Coalition of Service Industries, Inc. and a principal in Peat, Marwick, Mitchell & Co. With me this afternoon is the Coalition's counsel, Richard. R. Rivers of Akin, Gump, Strauss, Hauer & Feld. It is my pleasure to appear before you this afternoon on behalf of the Coalition to testify on several bills concerning trade in services—H.R. 5383, 5596 and 6773—which are pending before this Subcommittee.

I do not intend to consume your valuable time with a lengthy introduction explaining the importance of the service sector to the U.S. economy and the unique nature of our newly-formed Coalition, the only national organization representing the service industries or our economy. Events, and the press reporting these events, are doing this job for me. I call your attention to a page-one article of the July 6 New York Times entitled "Service Industries Gain in Job Totals: Goods Production in U.S. Trails in Economy for First Time." (Copy of article attached to this testimony.) When editors move stories about the service sector from the business sector to the op-ed page to the front page, you know that services has become news. And the major reason, Mr. Chairman, is U.S. jobs—24.3 million of them. As the lead sentence of the above article declares: "Employment in the consumer, financial and service industries has moved above the job total in the production industry for the

first time in the history of the American economy, according to Labor Department data." The Labor Department has called this fact an "economic milestone," and it is certainly one which cannot be lost on any public official, administrator, or economic thinker. While some people may still think of talk about the service sector as being a passing fad,[1] I believe the facts show otherwise—that we are actually talking about a solid and enormous economic reality. This is not to deny, of course, the overwhelming importance of our manufacturing sector and the interdependence and in many cases simple dependence of the service sector upon the health and vitality of those goods-producing industries.

Regarding the Coalition of Service Industries and its broad-based membership in the U.S. service sector, I refer you to our May 24th testimony before the Subcommittee.

Let me proceed to a discussion of the three bills covering services now before this Subcommittee. As I indicated, the Coalition has testified its strong support, with two exceptions which I will mention shortly, for H.R. 5383 before this Subcommittee two months ago. Our views on this bill have remained constant. H.R. 5596, the "Trade and Investment Equity Act of 1982", as modified by H.R. 6773, along with their counterpart in the Senate, S. 2094, are bills which address services and which the Coalition supports as well. These three bills (H.R. 5596, H.R. 6773, and S. 2094) have also been central to this year's trade "reciprocity" debate. Since the Coalition has not publicly stated its views on the "reciprocity" bills nor on the general topic of trade reciprocity, it is appropriate to do so in this forum and we hope will be helpful in your Subcommittee's further consideration of these bills.

The Coalition's view of reciprocity stems from the prove export success of the service sector and its further export potential. It is estimated that the service sector earned a $40 billion trade surplus last year. Most of our Coalition members earn significant revenues from overseas activities and foresee further such revenues if foreign barriers to services trade can be removed or alleviated and further barriers forestalled. An example of a service sector earning rapidly rising overseas revenues is the hospital and health care sector. An article in the July 9 Wall Street Journal discusses this growth. (Copy of article attached.) Another example of a major sector receiving significant foreign revenues is the construction and engineering sector. These services activities create U.S. jobs, both by requiring more U.S.-trained personnnel to supervise and run them and by injecting additional revenue into the company which permits additional U.S. expansion.

In short, Mr. Chairman, the service industries of this country which are active in international trade are dynamic, export-competitive firms. They are aggressively seeking opportunities abroad and are deeply interested in any U.S. action, legislative or executive, which might in any way jeopardize those opportunities. For this reason, Mr. Chairman, our Coalition has been concerned with the prospect of legislating "reciprocity" as the term was bandied about earlier this spring. The term "reciprocity" at that time was being used in a negative, protectionist sense by persons primarily concerned about the U.S. trade imbalance with Japan. I call that type of reciprocity "bilateral" reciprocity. When applied to international trade, it has a narrow, restrictive effect and can lead to retaliation and a spiralling downturn in world trade as occurred during the 1930 depression years when, one after another, nations threw up trade barriers.

Sectoral reciprocity can also lead to absurd and meaningless actions. For example, if an American data processing company is a victim of discrimination in a foreign country, it is pointless to restrict that country's access to the U.S. market if its firms have no presence here nor any intention of doing business in the United States. Accordingly, many members of our Coalition would be exceedingly cautious about seeking either sectoral or bilateral reciprocity in order to gain their export ends, simply because these firms may have U.S. interests which could be damaged were the search for sectoral reciprocity to lead to trade retaliation. Our Coalition therefore opposes enacting into the U.S. trade laws reciprocity in this narrow, sectoral or bilateral sense.

By contrast, the Coalition strongly supports reciprocity in the traditional, liberal or global context in which it has been used since 1934 when the U.S. first began to pursue a trade policy known as the "Reciprocal Trade Agreements Program." Reciprocity in this sense refers to a mutually advantageous exchange of bargained for (i.e., reciprocal) concessions, and it has been the cornerstone of U.S. trade policy and the General Agreement on Tariffs and Trade ("GATT") throughout the postwar period. It encompasses the trade principles of unconditional most-favored-nation

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[1] "Prematurely Burying Our Industrial Society," Amitai Etzioni in the New York Times (June 28, 1982).

treatment, national treatment, and a negotiated balance of concessions. I refer you to excerpts from a memorandum, which I am including for the record, by our counsel Richard Rivers on the topic of trade reciprocity. H.R. 6773 (and its Senate counterpart as recently revised, S. 2094) and H.R. 5383 accord generally with the liberal or global concept of reciprocity, and the Coalition supports these bills in this regard. H.R. 5519, the "Service Industries Commerce Development Act of 1982," which is pending on referral to your Subcommittee from the Energy and Commerce Committee, is also satisfactory on this point.

Once a bill passes the litmus test for reciprocity—i.e., it remains in the mainstream of U.S. trade policy support for liberal or global reciprocity through negotiation—the Coalition's first concern is with passage of legislation that will grant the President negotiating authority on services, signal to our trading partners the importance the U.S. Congress attaches to services, put services on an equal footing with goods in the U.S. trade laws, and strengthen section 301 as a remedy for dealing with services trade problems. We believe that either H.R. 5383, with some modificatioin, or H.R. 6773 could accomplish this objective.

H.R. 5383, with the deletion of Section 6 which adds a subsidization and unfair pricing provision to Section 301 and Section 8 which concerns independent regulatory agencies, is a fine services bill, passage of which the Coalition would heartily support. H.R. 6773 is also acceptable to the Coalition. H.R. 5519 also contains some especially good sections, such as its extensive definition of "services" and "barriers to trade" in Section 10. To repeat, what is important to the Coalition is—once the services bill has passed the reciprocity "litmus test" I have discussed above—that a services bill along the lines of H.R. 5383 or 6773 be reported from this Committee to the House floor. Passage of good services trade legislation is important for both its immediate and long-term benefits to the U.S. economy. It is particularly important in view of the GATT Ministerial scheduled to be held in November in Geneva.

This concludes my remarks on behalf of the Coalition. Both I and our counsel Richard Rivers look forward to your questions.

[From the New York Times, July 6, 1982]

Service Industries Gain in Job Totals

GOODS PRODUCTION IN U.S. TRAILS IN ECONOMY FOR FIRST TIME

(By Damon Stetson)

Employment in the consumer, financial and service industries has moved above the job total in the production industry for the first time in the history of the American economy, according to Labor Department data.

By April these industries, the most rapidly growing sectors of the national job market, employed 24.3 million workers, about 300,000 above the number employed in the goods-producing sector, which includes manufacturing, construction and mining.

In discussing what he called an economic milestone, Samuel M. Ehrenhalt, Regional Commissioner of the Bureau of Labor Statistics, said the changed relationship reflected not only the long-term shift toward a more service-oriented economy but also the weakness in goods production that has resulted from the current recession.

Jobs Aren't All Low-Paying

"A substantial proportion of the service-oriented job growth," Mr. Ehrenhalt said, "has been in professional, technical, managerial, administrative and problem-solving sectors. By no means are they primarily in the low-pay end of the job spectrum.

"They range from top-level professionals to clerical and maintenance work. But clerical work and computer operation today require more knowledge than industrial operations, and maintenance work is more mechanized than ever. The shift to a service economy has meant moves increasingly to know ledge workers. It's clear that we're moving into jobs of greate diversity and into jobs that are more interesting."

From April 1981 to last April, employment in goods-producing industries was down by 1.3 million nationwide, compared with a gain of nearly half a million in the service and finance industries, Mr. Ehrenhalt reported.

Other sectors in the economy, including wholesale and retail trade, transportation, pulbic utilities and government, employed 41.6 million people in April, down 280,000 from a year ago.

The continuing trend toward a service-oriented society, Mr. Ehrenhalt said, has been a factor in pulling more and more women into the workplace. The bulk of product jobs are blue-collar and are held by men, he said. But the largest occupational group today is clerical, whereas it used to be blue-collar operatives. Today, he said, 43 percent of men workers and 66 percent of women workers are in white-collar employment.

Many of the jobs in the service, financial and consumer sectors, particularly the more sophisticated jobs, tend to be in urban areas, Mr. Ehrenhalt said. This may offer some hope, he went on, for the revival of the cities and may also mean more interesting and challenging work in contrast to the routines and monotony of factory assembly lines.

The majority of the increases in service and finance employment over the year were in consumer areas such as health and personal services, amusement and recreation, educational and social services and nonprofit membership organizations. The employment totals in these rose by 333,000, or 2.7 percent, to 12,766,000 over the year.

235,000 More Health Services Jobs

Most of this rise, Mr. Ehrenhalt said, was in health services, which added 235,000 jobs over the year, to a total of 5,717,000.

Business service employment rose by 47,000 or 1.5 percent to 3,248,000, and financial services, which include banking, credit agencies, securities, insurance and real estate activities, moved up by 44,000, or 0.8 percent, to 5,312,000.

Other services, including automotive and repair, legal, engineering, and accounting services, were up 71,000 or 2.9 percent. The largest increase among these in the last year was in legal services, which now employ 552,000 people, 32,700 more than a year earlier. Accounting services have also increased significantly, rising by 19,000 to 358,000 over the year.

In contrast to the increases in the service and finance sectors, Mr. Ehrenhalt said, there were steep recession-related declines in manufacturing, off 1.1 million or 5.5 percent, and construction, down 378,000 or 9.2 percent. But mining jobs rose by 200,000 over the year, mostly reflecting temporarily reduced employment levels in April 1981 resulting from the United Mine Workers strike in the coal industry.

3 Areas Tripled Over 30 Years

Growth in the consumer, business and financial sectors has tripled in the last three decades, rising by 17 million. As of April, Mr. Ehrenhalt said, these industries accounted for more than 27 percent of all the nation's nonfarm payroll jobs, compared with 16 percent three decades ago. Meanwhile, production employment has fallen from 41 percent to slightly less than the current service figure.

From 1972 to 1981, the sharpest increase in jobs among the consumer, business and financial sectors was in business services, up 1.5 million, or 82 percent. There was a particularly sharp advance for legal services, a part of business services, which was up 261,000, or 96 percent.

There were also substantial increases in engineering and architectural services, up 231,000 or 63 percent, and accounting, auditing and bookkeeping services, up 131,000 or 64 percent.

Jobs in social services more than doubled in this period, rising by more than 600,000. Health service jobs rose by 2.1 million or 63 percent, and amusement and recreational services rose by 269,000 or 53 percent.

The smallest increase between 1972 and 1981 was in the financial services sector, where employment rose by 1.4 million or 36 percent. Jobs in the securities sector were up 58,000 or 29 percent over the nine-year period, while the number of jobs in the insurance industry was up 342,000, or 25 percent. Banking employment rose by half a million or 46 percent, and credit agencies other than banks added 200,000 jobs, a rise of 52 percent.

In the goods-producing area, by contrast, manufacturing jobs increased by 1,022,000 or 5.3 percent and construction jobs by 287,000 or 7.4 percent over the decade. The exception in this area was mining, in which employment rose by 504,000 or 80.3 percent. This reflected growing dependence on coal as a result of the oil shortages in the 1970's and increased exploration for gas and oil, Mr. Ehrenhalt said.

Hospital Firms Are Expanding Foreign Work

(By Jennifer Bingham Hull)

When American Medical International Inc. acquired the Clinque Cecil in Switzerland, it built a large reservoir for trout. It says it did so because Swiss surgeons believe patients recover more rapidly when they eat fresh, poached fish.

Cultural differences are just one problem faced by U.S. companies operating medical facilities abroad. There also can be political risks. And some say increasing competition has made operations in the Middle East less profitable. But despite such difficulties. U.S. hospital management companies are rapidly expanding overseas in pursuant of potentially great rewards.

At least seven U.S. concerns are operating hospitals overseas. Many started facilities in the early 1970's and have expanded quickly in the last two years. While foreign operations typically account for less than 10 percent of their revenue, Whittaker Corp., Los Angeles, gains 50 percent of its operating profit overseas. The companies believe the field will grow.

The U.S. concerns attribute much of their overseas expansion to dissatisfaction with national health care, at least among some groups of people. In England, where more than 600,000 people are waiting for elective surgery, a lucrative private market has developed.

AMI's Growth

Royce Diener, chairman of AMI, says "One by one, the governments are encouraging the reemergence of the private sector."

The growth of AMI, a Beverly Hills, Calif., concern, illustrates this expansion by U.S. companies. By the end of 1981 the company had more then 1,800 beds overseas generating $61.4 million in annual revenue. By the end of this year it expects to have more than 3,500 beds in facilities it owns, manages, or is constructing abroad.

AMI owns or manages seven hospitals in Britain and has two more under construction. One of its main competitors, Hospital Corp. of America in Nashville, Tenn., has six British hospitals. HCA had $80 million in annual revenue from overseas operations in 1981 and expects to have more than 3,000 beds overseas by the end of this year.

Part of the growth in the British market is due to the Conservative government's support for voluntary insurance, which provides easier access to private medical care. "What the Thatcher government has done is to legitimate the private sector," says Odin Anderson, professor of sociology at the University of Chicago's Graduate School of Business.

Higher Profit Margins

In Brazil, some employers have turned to health maintenance organizations, including one run by HCA. It contracts with 1,400 companies to serve 650,000 employees. The HMOs are still relatively new to Brazil. According to Dr. Milton Roemer of the School of Public Health at the University of California, Los Angeles, "the impact would be small—they would only be reaching relatively high-paid groups."

Because the American companies often treat affluent, private patients abroad, they say their profit margins are higher than in the U.S., where, they contend Medicare and Medicaid don't adequately cover hospital costs.

David Jones, chairman of Humana Inc. in Louisville, Ky., says profit margins for its Wellington Hospital in London are about double those of its U.S. facilities, where 45 percent of the patients are government-supported. Humana says it can get a 20 percent after-tax return abroad, compared with 15 percent in the United States.

The companies are considering going into densely populated areas with substantial middle and upper classes that can afford private care—places such as Singapore, Malaysia and Hong Kong.

They're also looking at possibilities in Mexico. Henry Werronen. vice president of planning and corporate relations for Humana, which is building a facility in Mexico, says Mexico City has only 1,500 private beds to serve a potential market of a million people. "It's a small percent of the total that can afford private care, but Mexico City has such a large population that it's a lucrative market," he says.

The demand for American expertise is great in some Middle Eastern countries, particularly Saudi Arabia, which has made the building of health-care facilities a top priority. The Saudis' 1980–1985 plan calls for spending about $11 billion for health care and providing 25,000 new beds.

While the Saudi government owns almost all facilities, the contracts are often comprehensive, covering everything from construction to staff recruitment. "We have a marketplace approach. We can design, manage, equip and build," says Peter De Wetter, chairman of the international group of National Medical Enterprises Inc., Los Angeles.

There are, however, risks. Companies involved in Saudi Arabia say they have nothing to fear because they believe the regime is stable and their financial commitment is limited. But Wall Street isn't so sanguine. "The biggest fear is the instability of the area," says Martin Cosgrove, an analyst at Bateman Eichler, Hill Richards Inc. "You have to put a lower PE (price-earnings ratio) on those profits because of the political risk."

And in the Mideast, the price of a contract can include payments that violate U.S. law. In 1978, the Securities and Exchange Commission charged that HCA made nearly $4.3 million in payoffs to influential Saudis under the guise of consulting fees to a Liechtenstein concern in connection with a contract to manage the King Faisal Specialist Hospital. In consenting to a federal court order settling the case, HCA neither admitted nor denied guilt.

Delays in construction and changes in government policy can be problems. Within months of HCA's entry into Australia in 1978, the government switched gears and adopted a national health program. HCA, which now owns nine hospitals in Australia, says it didn't make a profit on operations there until the first quarter of 1982, after the government established incentives to encourage private-sector growth.

And in the Mideast, some companies say, business is less lucrative now because of increasing competition and sophistication. The Saudis, for instance, are said to be tougher negotiators than in the past.

"Ten years ago you could go into that country and a bunch of companies could quote them high prices. "Now they're much more professional. You've got to have a competitive bid," says Michael Ford, National Medical Enterprise's vice president of professional staffing.

And Robert Crosby, executive vice president of HCA's international unit, predicts that uncertainty in the oil market will affect business in Saudi Arabia. "We're seeing more competition, lower prices and lower margins, and it's just not as attractive to us as it has been," he says.

But other companies say they're not discouraged, Whittaker gets about half its operating profit from Saudi Arabia, Abu Dhabi, and North Yemen. Chairman Joseph Alibrandi says competition has forced the company to lower prices, but margins have been maintained through improved efficiencies.

And he doesn't seem worried by the effect of an oil glut on Middle East economies. "Providing health care to the people is a very high priority," he says. "I think they'll cut a lot of things before they cut the things that directly benefit the people."

AKIN, GUMP, STRAUSS, HAUER & FELD,
Washington, D.C., March 29, 1982.

MEMORANDUM

Memorandum for: Coordinating Committee, Coalition of Service Industries, Inc.
From: Richard Rivers.
Subject: "Reciprocity" in U.S. International Economic Law and Policy.

INTRODUCTION

The term "reciprocity" is cropping up regularly in the current public discussion of U.S. international economic policy. "Reciprocity" as it is presently being employed is capable of various meanings. Moreover, different policy implications arise depending upon which meaning is intended and whether the reference is to "reciprocity" in international trade in goods, or services, or investment. This memorandum has been prepared to assist the Committee in better understanding the origins of current debate and formulating its position on the "reciprocity" issue.

THE RECIPROCAL TRADE AGREEMENTS PROGRAM

Since 1934, the United States has pursued a trade policy technically known as the "Reciprocal Trade Agreements Program." "Reciprocity" in this sense—one might call it "classical reciprocity"—refers to a mutually advantageous exchange of bargained for *(i.e.,* reciprocal) concessions, typically tariff reductions, on different prod-

ucts (*e.g.*, widget concessions for wine concessions). "Reciprocity" in this sense is a reference to the original string Congress attached before lending its constitutional tariff cutting authority to the President: the tariff cutting authority could not be used unilaterally; tariffs could only be cut in the context of negotiations in which 'reciprocal' trade concessions of equal value—although likely on different products—would be swapped by the U.S. with its trading partners. The goal of the Reciprocal Trade Agreements Program, therefore, was the "reciprocal" reduction of tariffs through negotiated trade agreements in which each party—the U.S. and its trading partner(s)—would reduce tariffs on a particular product in return for concession on another product (likely not the same) in which the other party perceived a comparative advantage.

"Reciprocity" in this classical sense is not protectionist or retaliatory in character. Nor is it bilateral or sectoral in its approach. To the contrary, it was a cornerstone of U.S. trade policy aimed at the progressive liberalization of international trade in goods through negotiated trade agreements. In this sense, "reciprocity" is closed allied with three other concepts which are firmly rooted in both U.S. trade policy and—not coincidentally—the GATT. These are:

Unconditional Most Favored Nation Treatment.—GATT Article I requires that any benefit given to one GATT contracting party be unconditionally extended to all Contracting Parties (i.e., whether or not they gave something in return).

National Treatment.—GATT Article III requires that once a good crosses a border it is to be treated the same as a domestic good with respect to "all laws, regulations, and requirements" affecting sale.

Balance of Concessions.—Implicit in GATT Articles XXII, XXIII, and XXVIII is the concept that negotiated tariff concessions are balanced (i.e., the agreed upon concessions were presumed to be balanced, irrespective of the over-all level of barriers existing prior to or after the negotiations), and that if a concession is subsequently eliminated or 'nullified or impaired' the original balance may be restored either by means of compensation in the form of additional concessions on alternative products of interest to affected countries or by means of a withdrawal of concessions by such countries.

These principles have been the hallmarks of the post-war liberal trade policy of the United States. 'Reciprocity' in this sense—Ambassador Brock calls this "global reciprocity"—is the foundation upon which U.S. trade policy and the GATT have been built.

"RECIPROCITY" IN U.S. TRADE POLICY IN MORE RECENT TIMES

Notwithstanding the success of the GATT system in reducing barriers, particularly tariffs, to trade in goods, there have been several growing themes of discontent with the system which have, in recent years, emerged in U.S. trade law and policy. These themes of discontent may be paraphrased as follows:

The unconditional MFN principle gives a free ride to countries that do not chip into the pot with tariff concessions of their own.

(See Section 126 of the Trade Act of 1974 requiring a Presidential determination whether any major industrialized country has failed to make concessions in the Tokyo Round affording U.S. commerce "substantially equivalent competitive opportunities" to those afforded by the U.S.)

Cross sectoral negotiations (i.e., tariff concessions on wine in return for tariff concessions on say, computers) yield the inequitable result of eliminating the protection afforded by tariffs for a particular industry without affording that industry a chance to compete abroad.

(See Section 104 of the Trade Act of 1974 establishing as a negotiating objective "substantially equivalent competitive opportunities" on a sector by sector basis, to the maximum extent feasible.)

The U.S. has no more concessions to give; other countries started later; now our market is open and theirs remain closed; the U.S. needs new leverage if significant liberalization is to be achieved or meaningful trading rules are to be negotiated in the future; the U.S. should abandon unconditional MFN in favor of conditional MFN. (Conditional MFN—under which the benefits of concessions are accorded only countries who meet the condition was U.S. tariff policy until the 1920's when it was abandoned because unconditional MFN was considered more advantageous to the U.S. In the Tokyo Round, the Government Procurement and Subsidies Codes were negotiated on the principle of conditional MFN, *i.e.*, the benefits of the codes flow only to countries assuming their obligations.)

THE CURRENT DEBATE OVER "RECIPROCITY" IN U.S. LAW AND POLICY

It is against this historical backdrop that the current debate over "reciprocity" should be viewed and preliminary conclusions drawn about its implications for the services issue. Certain trends are apparent:

As far as the Administration is concerned "global reciprocity"—i.e., reciprocity in the classic sense characterized by unconditional MFN, and liberalization through negotiation—is now and will remain the U.S. policy with respect to trade in goods. In his testimony before the Senate Finance Committee, Ambassador Brock said the U.S. will do nothing to violate GATT obligations. Secretary Baldrige left the door slightly open to "bilateral reciprocity" (i.e., singling out non-reciprocal countries) for trade in goods.

This leaves open the possible application of "bilateral reciprocity" or "sectoral reciprocity" (i.e., widgets for widgets) to both services and investment where by and large no international rules presently exist.

Numerous examples of "sectoral reciprocity" relating to services and investment can be found in both Federal and State laws (e.g., aviation and mineral leases on Federal lands) but there are far more instances where the idea of "sector reciprocity" has never been entertained or has been expressly rejected (e.g., Federal banking law).

Given the current climate there may be strong pressures to apply "bilateral reciprocity" and "sector reciprocity" principles to trade in services as well as international investment. Examples already abound (e.g., S. 898, telecommunications; S. 2057, trucking; and H.R. 7791 and H.R. 7750, both relating to investment).

Chairman GIBBONS. I hope we can get that bill passed and get some meaningful negotiation started on services. I want to express our appreciation to the coalition, and to Mr. Rivers and you, particularly, for all the fine work you all have provided in getting this legislation as far as it has gone.

Mr. Frenzel?

Mr. FRENZEL. Yes. I would like to welcome back two refugees from Federal service and thank them for their continuing wise counsel. Can you tell me who the Coalition of Service Industries is?

Mr. HUNNICUTT. Yes, sir, I would be happy to. Our coalition was formed earlier this year, essentially came into being in March, and includes among its members as of the moment the American Express Co., American International Group, AT&T, ARA Services, Bank of America, Bechtel Power Corp., Beneficial Finance, CIGNA, Citibank N.A., City Investing Co., CBS, InterContinental Hotels Corp., The Continental Insurance Co., Deloitte, Haskins & Sells, Flexi-Van Corp., Fluor, Chase Manhattan Bank N.A., Interpublic Group of Companies, Inc., IBM, Merrill Lynch, Marsh & McLennan, Peat, Marwick, Mitchell & Co., Sea-Land Industries, Inc., and Young & Rubicam.

Mr. FRENZEL. Thank you very much for your testimony.

Mr. HUNNICUTT. Thank you, Mr. Chairman. Thank you.

Chairman GIBBONS. The next panel from the Semiconductor Industry Association, Mr. George Scalise, and from Scientific Apparatus Makers Association, Mr. Edward J. Best, and our good friend Ambassador Wolf. Happy to have you.

Mr. SCALISE. That is correct. We are grateful for Ambassador Wolff's wise counsel.

STATEMENT OF GEORGE SCALISE, SENIOR VICE PRESIDENT, ADVANCED MICRO DEVICES, INC., ON BEHALF OF THE SEMICONDUCTOR INDUSTRY ASSOCIATION

Mr. SCALISE. I am George Scalise, senior vice president of Advanced Micro Devices. I am here representing the Semiconductor

Industry Association. SIA has 54 member companies and represents the majority of American merchant and captive producers of semiconductors in matters of trade and Government policy.

Two bills presently before your committee—H.R. 6433 and H.R. 6773—contain a carefully constructed package of measures concerning high technology which we believe will take us a significant step forward in dealing with problems of high technology trade and investment.

The components of this package have been incorporated in Senator Danforth's bill, 2094, recently reported out of the Senate Finance Committee. The Reciprocal Trade and Investment Act of 1982, H.R. 6773, before this subcommittee now, is a companion bill to the Danforth bill, and mirrors it in every respect with the exception of the tariff-cutting authority presently in the Senate bill.

Through swift passage of this legislation, you will give the executive branch an additional mandate and instruments it needs to open world markets for high technology products and to effectively exploit the opportunities which hold the greatest potential for this country.

Through an emphasis on high technology, more than on any other industry, the United States is most likely to achieve its economic goals. High technology industries such as the semiconductor industry will fuel the electronics revolution. World markets for semiconductors and other high technology products are expanding at an extraordinary rate. In fact, it has been estimated that the world market for semiconductors will grow from $15 billion to $60 billion by 1990.

This is an area in which the United States is strong and highly competitive, be it in innovative products, in cost or in quality. In fact in the area of quality, since it is an issue that constantly comes up, I just want to give you a quote.

This comes from Richard Anderson, general manager of the Computer Division of Hewlett-Packard. He stated, "As far as I'm concerned American firms have closed the gap on quality with the Japanese, U.S. firms have defused the issue."

So I hope that once and for all we can put behind us any discussion about whether we are competitive in cost or quality with the Japanese. I think the answer to that has been well demonstrated as has been affirmed by some of the major customers here in the U.S.

The semiconductor industry provides an area of rapidly expanding employment at a high level of skill. For every job created in the high technology industries, eight jobs are created in sectors that supply it. In California, for instance, it has been estimated that 45 percent of the new jobs in the last 5 years have been created by the semiconductor and related industries.

The critical importance of confronting and dealing with problems of high technology trade and investment was emphasized in a recent Joint Economic Committee study. In that study they stated:

> The semiconductor industry is at the heart of the transformation of industrial life being produced by information-processing technology * * * In our view, the relative strength of the several advanced industrial countries in the next few decades will be significantly affected by differing nation's capacities to develop and apply these electronic component technologies.

I quote now from another source: "The United States is in a state of relative decline—politically and economically."

That is a quote from "The vision of MITI Policies in the 1980's"—a document published by the Japanese Ministry of International Trade and Industry—the chief architect of Japan's policies promoting its high technology industries. Its authors have no doubt about the path they intend to follow.

They go on to say:

> Economic security will be achieved through technological innovation; government action will be required because of the demand for large amounts of money * * * Japan has heretofore borrowed, applied and improved upon imported technologies. In the 1980s, it must switch over to "forward engineering" by increasing budgets for R&D consistent with a "long-term vision for technological development," which identifies priorities * * *.

Mr. Chairman, we have a vision of our own. Our vision is that international trade and investment in high technology should be open and fair, and that excellence should be the sole determinant of success. Our point of departure for trade policy is that there is no good substitute for complete openness across international borders of international trade, investment, and knowledge.

The global economies of scale and the access to capital essential to any viable high technology industry can only be achieved if market restrictions are eliminated. Moreover, except through fair international competition, the level of innovativeness so vital to high technology cannot be maintained.

Today our trading partners are increasingly intervening in the normal flows of international trade and investment, with the intent of expanding exports and restricting access to their markets.

Although Japan, for example, instituted a program of trade liberalization in 1976, the effects of this program were mitigated by increased Japanese Government support for R&D in core industries and by continued restrictions in foreign access—principally through limiting procurement opportunities. The Japanese Government released the following statement at that time:

> Because the computer industry is becoming increasingly important to the future of our economy, society and the people's daily life, we have tried to foster and strengthen this industry. On the occasion of the import liberalization, to go into force on December 24, 1975, the Government (will continue to) cherish the independence and future growth of Japan's computer industry, and will keep an eye on movements in the computer market so that liberalization will not adversely affect domestic producers nor produce confusion.

As recently as 1978, the "Buy Japan" philosophy was further strengthened by the enactment of Public Law No. 84—designed to assist industry in the development of electronic devices, electronic computers, and computer software. The law provides for low-cost R&D funding, the formation of cartels exempt from antimonopoly laws, special tax benefits, and entry restrictions directed at minimizing competition.

The consequences in terms of price and market share are disastrous. Semiconductor prices in the United States until very recently have followed a traditional learning curve pattern, with prices declining steadily over time, as output expands and efficiency is achieved through experience. Our price per bit of memory has declined at a classic rate of about 30 percent for each doubling of production volume, tracing a very steady, healthy downward slope.

A more dramatic way of putting it is that between 1973 and 1981, we succeeded in reducing our cost per RAM [random access memory] bit by about 97 percent. I think that is significant. I do not think there is an industry in the Nation that can claim a 97-percent price reduction during the inflationary period of the 1970's. That is demonstrated by this learning curve represented in figure 1.

When the Japanese entered the 64K RAM market in October 1980 our price curve dropped from a 70-percent to a 19-percent slope. During 1981, the price of the 64K RAM fell from $25 or $30 per device, to about $6. The result of this dislocation in learning curve price will cost the industry billions of dollars in revenue. That is shown by the shaded area in the graph in figure 1.

The United States-Japan trade balance for semiconductors illustrates just how successful—and how disastrous—these policies have been. Imports from Japan in 1981 climbed to nearly $400 million, while exports to Japan remained flat. This is shown on the chart where the U.S. exports to Japan, bottom line; imports from Japan are the top line there. (Fig. 2.)

This represents a complete reversal of our trade position with Japan in this industry. There is another important dimension to this. In addition, these foreign industrial policies resulted and this change in trade patterns have also resulted, in an erosion of investor confidence in U.S. high-technology industries and make it far more difficult to fund them in the future.

The impact of these policies on U.S. producers and sellers is brought home by examining the experience of a particular product. The JEC study I mentioned earlier pointed out that in an open market, the sales level of a U.S. producer selling a unique product in a foreign market would gradually drop off to a reduced market share after foreign production began. The study pointed out that if U.S. sales of a product instead fall off rapidly to virtually nothing once foreign production begins, that would be evidence of a closed market.

The chart in figure 3 shows a very good example of this. We had the product, the product was designed here in the United States, then sold to the Japanese market. The market share grew to about $500 million a year. As soon as the Japanese entered that market, you can see a precipitous fall and eventually there is no market for American products left. Yet that product is still being used in very large volume over there. As figures 3 and 4 indicate, preliminary analysis of sales of an actual product—the 8080-type microprocessor—appears to illustrate this phenomenon.

The combination of legislative measures in the bills before you, H.R. 6433 and H.R. 6773, contain the ingredients necessary for achieving substantial progress in dealing with the problems of high technology trade and investment, and may form the foundation for a comprehensive multilateral solution.

These measures are urgently needed, and we emphasize the importance of their early enactment.

One final point. While we are here to talk about international trade legislation, we cannot forgo this opportunity to mention to you the serious threat to the international competitiveness of our industry that could result from major changes in the R&D credit as

enacted last year. We understand the Ways and Means Committee will consider in its revenue-raising markup a proposal to cut back R&D credit by almost one-half by adopting an R&D deduction disallowance for amounts equal to the credit received in any year.

This proposal is the equivalent of reducing the rate of credit from 25 percent to 13.5 percent for corporations with significant R&D budgets. This reduction in the credit could have a major impact on the ability of U.S. companies to survive in world markets.

We strongly urge that the committee not adopt this provision.

Thank you, Mr. Chairman.

[The prepared statement and charts follow:]

STATEMENT OF GEORGE SCALISE, SENIOR VICE PRESIDENT, ADVANCED MICRO DEVICES, INC., ON BEHALF OF THE SEMICONDUCTOR INDUSTRY ASSOCIATION

INTRODUCTION

Mr. Chairman, I am George Scalise, Senior Vice President of Advanced Micro Devices. I am here presenting the Semiconductor Industry Association. SIA has 54 member companies and represents the majority of American merchant and captive producers of semiconductors in matters of trade and government policy.

United States high technology industries are increasingly threatened by neomercantilist policies of protection and promotion. High technology industries are the most dramatic target of such policies, and are most severely affected by them, as a result of our need for global markets.

Perhaps the most significant adverse impact of such foreign government policies is the consequent erosion of investor confidence in the United States. While highly innovative industries normally give rise to high levels of investment in research and development, with resultant benefits in terms of employment and a balanced budget, foreign industrial policies distort that equation and divert those social benefits abroad.

Our goal is maximum openness of international trade and investment for high technology trade and investment. A reactive response on the part of the United States will be ineffectual. What is called for is a predictive, preemptive United States policy.

LEGISLATIVE OBJECTIVES

Two bills presently before your committee—H.R. 6433 and H.R. 6773—contain a carefully constructed package of measures concerning high technology which we believe will take us a significant step forward in dealing with problems of high technology trade and investment. My purpose in coming here today is to emphasize how critically important these legislative objectives are to the semiconductor industry, to other U.S. high technology industries, and to the economic future of the United States. Through swift passage of this legislation, you will give the executive branch the mandate and the instruments it needs to open world markets for high technology products and to effectively exploit the opportunities which hold the greatest potential for this country.

Through an emphasis on high technology, more than on any other industry, the United States is most likely to achieve its economic goals. High Technology industries such as the semiconductor industry will fuel the electronics revolution. World markets from semiconductors and other high technology products are expanding at an extraordinary rate. It has been estimated that the world market for electronic products over the next ten years will exceed one trillion dollars.

This is an area in which the United States is strong and highly competitive. It is an area of rapidly expanding employment at a high level of skill. For every job created in the high technology industries, eight jobs are created in sectors that supply it. In California, for instance, it has been estimated that 45 percent of the new jobs in the last five years have been created by the semiconductor and related industries.

H.R. 6433, the proposed "High Technology Trade Act of 1982" provides the negotiating mandate we need. This bill has been carefully formulated to provide an effective method of dealing with foreign industrial policies which distort international high technology trade and investment and other policies and measures which distort trade or investment or deny national treatment to U.S. companies.

The purpose of the Act is to achieve maximum openness of international high technology trade and investment, through negotiated bilateral and multilateral agreements directed at eliminating such measures. The Act authorizes the President to negotiate agreements, which may include commitments to change U.S. laws or policies, and authorizes him to modify tariff treatment and use existing authority to alter U.S. laws, where necessary to carry them out. H.R. 6433 would provide for more vigorous use of the discretionary remedies under trade agreements and existing law, where negotiated solutions are not possible. Finally, it would establish an effective system to monitor the openness of foreign markets to U.S. high technology products, services, and investment.

SIA has played an active role in communicating to the government the problems facing the U.S. high technology industries, and in helping to formulate the approach to solving those problems which is incorporated in H.R. 6433. We are optimistic that the carefully constructed package of measures concerning high technology will prove to be an effective means of dealing with problems of high technology trade and investment.

The components of this package have been incorporated in Senator Danforth's bill (2094), recently reported out of the Senate Finance Committee. Congressman Frenzel's bill (H.R. 6773), before this subcommittee now, is a companion bill to the Danforth bill, and mirrors it in every respect, with unfortunate exception of the tariff-cutting authority presently in the Senate bill.

The drafters of Frenzel's H.R. 6773 have recognized the elimination of existing tariffs as an important objective of the United States—both in real terms and as a symbol of a more comprehensive commitment to liberalization on the part of our trading partners. Section 5 of the bill lists as a negotiating objective "the reduction of elimination of all tariffs on, and other barriers to, United States exports of high technology products and related services."

Tariff-cutting authority in this area would provide necessary bargaining leverage in negotiating away existing foreign tariffs and other barriers. Moreover, the tariff-cutting authority proposed in the Danforth bill is limited one, tailored to the needs of the high techology industries. The authority is limited to seven specific products—the duty on each of which is less than five percent—and is for a five-year duration only.

The chief importance of the tariff-cutting authority, however, stems from its role as an integral and necessary part of a carefully constructed package of legislative measures designed to deal effectively with the whole range of problems in international high technology trade and investment. The elimination of tariffs is part of an orchestrated solution to those problems.

In testimony before the Senate International Trade Subcommittee last March, USTR William E. Brock emphasized the need for this authority, stating:

"Focus should be directed toward the need for multilaterial consideration of high technology trade. I ask that Congress examine the reduction of barriers to trade in high technology goods, including the reduction of tariffs. Such a provision would give the President specific authority to reduce U.S. tariffs on high technology products in exchange for equivalent concessions."

THE SIGNIFICANCE OF HIGH TECHNOLOGY

In our effort to ensure that high technology receive a specialized focus in any trade legislation, we are not asking for a sectoral negotiating mandate in the traditional sense. If there are still some who do not understand that, then we have not spoken clearly enough.

There are segments of practically every U.S. industry that could be identified as high technology industries as a result of high levels of investment in research and development and innovativeness. There are products in every industry that are produced as a result of high technology. By definition, high technology products are in the forefront of technological progress in every sector. Identified not by product usage but by input (the amount of research and development), the high technology sector takes the most sophisticated, innovative products from many product sectors, to form the wave of the future. These are the products and industries on the frontier of technological progress in a range of areas and product sectors.

No group of industries has a more direct effect on the national security, defense preparedness, industrial health, overall economic vitality and international competitiveness of the United States than the high technology industries.

The critical importance of confronting and dealing with problems of high technology trade and investment was emphasized in recent Joint Economic Committee Study:

"The semiconductor industry is at the heart of the transformation of industrial life being produced by information-processing technology. . . . In our view, the relative strength of the several advanced industrial countries in the next few decades will be significantly affected by differing nations' capacities to develop and apply these electronic component technologies. . . . Because the products of this industry are the crucial intermediate inputs in all final electronics systems, competition in the semiconductor industry will be at the center of competition in all industries which incorporate electronics into their products and production processes. . . . Thus the loss of leadership in this industry would mean the loss of international competitiveness in many of the advanced technology sectors that have been the basis of a U.S. advantage since the Second World War."

I quote now from another source:

"The United States is in a state of relative decline—politically and economically—the world is further transitioning toward a multi-facted and multi-polar structure with a resultant intensification of instability."

That is a quote from "The Vision of MITI Policies in the 1980's"—a document published by the Japanese Ministry of International Trade and Industry—the chief architect of Japan's policies promoting its high technology industries. Its authors have no doubt about the path they intend to follow:

"Economic security will be achieved through technological innovation; government action will be required because of the demand for large amounts of money. . . . Japan has heretofore, borrowed, applied and improved upon imported technologies. In the 1980s, it must switch over to 'forward engineering' by increasing budgets for R&D consistent with a 'long-term vision for technological development', which identifies priorities. . . ."

Speaking before the OECD Industry Committee in 1970, the vice-minister of MITI stated:

"The Ministry of International Trade and Industry decided to establish in Japan industries which require intensive employment of capital and technology, industries that in consideration of comparative cost of production should not be the most inappropriate for Japan, industries such as steel, oil refining, petrochemicals, automobiles, aircraft, all sorts of industrial machinery, and electronics, including electronic computers. From a short-run viewpoint, encouragement of such industries would seem to conflict with economic rationalism. But from a long-range viewpoint, these are precisely the industries of which income elasticity of demand is high, technological progress rapid, and labor productivity rises fast."

OUR VISION

Mr. Chairman, we have a vision of our own. Our vision is that international trade and investment in high technology should be open and fair, and that excellence should be the sole determinant of success. Our point of departure for trade policy is that there is not good substitute for complete openness across international borders to international trade, investment and knowledge. As in no other area of international trade and investment, in knowledge-intensive goods there is a basic synergy that makes international exchange extraordinarily beneficial. The flow of technology, trade and investment across borders benefits all nations.

To restrict trade is ultimately self-defeating. When the Japanese chose to restrict minicomputer imports in the early 1970s, they slowed progress in many of their domestic industries, limited the evolution of the applications for computers in Japan, and weakened the development of the software industry in Japan. Today, Mexico and Brazil are seeking to take a great step forward, but are injuring themselves seriously in that attempt. A failure to respond to this new incidence of mercantilism—particularly prevalent in the high technology field—would adversely affect each individual nation and the international system as a whole. In our highly interdependent international economic system, maximum worldwide development of high technology is undeniably in the best interests of all. To adopt short-sighted policies focused exclusively on national achievement is to divert us from the path of maximum efficiency and progress, and can only be counterproductive.

Elimination of the barriers to free international trade and investment can be the only logical goal in this sector for any nation. The global economies of scale and the access to capital essential to any viable high technology industry can only be achieved if market restrictions are eliminated. Moreover, except through fair international competition, the level of innovativeness so vital to high technology cannot be maintained.

These products and industries occupy a unique position in every national economy. Because of their diverse and pervasive uses, measures which deter progress in

this area by restricting international free trade and investment in high technology ultimately deter progress in a whole range of important industries.

To persist in restricting market access and seeking to expand exports would be an ultimately fruitless effort for any nation. Even purely national goals are not likely to be achieved in the current atmosphere. Developed and advanced developing nations alike would soon find foreign markets closed to them.

THE THREAT FROM FOREIGN GOVERNMENT POLICIES

One would suppose that the truth of this proposition—that openness in high technology trade and investment is globally beneficial—would be a self-evident proposition. Yet increasingly, trade and investment in high technology goods are being curtailed, restricted and rechanneled.

There is abroad, for high technology trade and investment, a neomercantilism that is spreading throughout the industrialized world, including the newly industrializing countries. It is becoming apparent that the major influence on high technology trade in the future will be neither the average tariff on industrial goods which in developed countries will only average 4 percent in 1987, nor the codes of conduct with respect to nontariff barriers.

Much of the progress achieved to date in expanding and liberalizing international trade and investment is being eroded by a wave of neomercantilism. Policies and measures implemented by foreign governments today echo the mercantilist policies of Western European nations three centuries ago. Motivated by the desire to build strong nation-states, and perceiving total world economic welfare as finite and any benefit to one nation therefore only achievable at the expense of another, each government pursued an aggressive, nationalistic economic policy aimed at securing a favorable balance of trade. To achieve that end, governments vigorously protected and promoted their industries and regulated trade in order to limit imports and expand exports.

There are striking and disturbing parallels between the range of traiffs, subsidies, financing, anticompetitive devices and industrial policies during that time of nationalism and international animosity, and those prevalent today.

Having recognized the critical nature of high technology industries and their direct relation to each nation's international competitiveness, our trading partners have made those industries the focus of nationalist policies. Foreign governments, including those of many of the newly industrialized countries, are unfairly protecting and promoting their industries while restricting foreign access through a range of tariff and nontariff barriers and other trade-distorting measures such as government and joint government-industry planning and establishment of objectives, toleration of anticompetitive practices, investment performance requirements, subsidization, sponsorship of limited-access joint research projects, and preferential financial and taxation measures. In contrast, the United States market is substantially free of government intervention, and is open to foreign import and investment.

Our companies seek full access to the protected home markets of our major competitors, and we are increasingly being denied access to those markets. Our largest potential foreign markets remain substantially closed to U.S. markets.

A Joint Economic Committee study published this February illustrated just how pervasive—and successful—such policies have been in Japan, our major competitor. Japan's policy towards its semiconductor industry echoes the theme of previous policies directed at its steel, shipbuilding and automobile industries. This policy theme has stressed the creation of comparative advantage in high value-added industries with potential economies of scale, to facilitate exporting. This is accomplished by government control over and restriction of foreign access, and by government enhancement of the export-competitiveness of key domestic industries, through support and restructuring to achieve vertical integration, rationalization and oligopolization.

During the 1960s and early 1970s, the Japanese Department restricted access to its market by rejecting all applications for wholly-owned subsidiaries and joint ventures in which foreign firms would hold majority shares, and restricted foreign purchases of equity in Japanese firms. Imports were restricted through high tariffs, quotas, approval registration requirements, and discriminatory customs and procurement procedures. The Japanese government used licensing requirements to achieve diffusion of foreign advanced technology throughout its industry.

In 1976 a joint industry and government project was launched, aimed at the development of very large-scale integration technology (VLSI), and funded by public subsidies and private contributions. Approximately one-third of this funding went to purchase the most advanced manufacturing and testing equipment from U.S. manu-

facturers. The program was directed in major part at overcoming the U.S. lead in advanced integrated circuits.

Trade liberalization in 1976 was mitigated by increased Japanese Government support for R&D in core industries and by continued restrictions on foreign access—principally through limiting procurement opportunities. The Japanese Government-ed released the following statement at that time:

"Because the computer industry is becoming increasingly important to the future of our economy, society, and the people's daily life, we have tried to foster and strengthen this industry. On the occasion of the import liberalization, to go into force on December 24, 1975, the Government (will continue to) cherish the independence and future growth of Japan's computer industry, and will keep an eye on movements in the computer market so that liberalization will not adversely affect domestic nor produce confusion."

As recently as 1978, the "Buy Japan" philosophy was further strengthened by the enactment of Public Law No. 84—designed to assist industry in the development of products selected by the Japanese government that fall into the categories of electronic devices, electronic computers, and computer software.

Under the law, the appropriate ministries are to publish a plan for realizing a high level of production for each product specified by government order. Each plan is to state, among other things, its goals, a time frame in which to accomplish them, and the estimated amount of funds required.

In order to effectuate the government plans, the law provides for various forms of funding and tax benefits. It also permits the formation of cartels, through an exemption from the antimonopoly laws, and for rationalization. I quote:

"The Competent Minister may direct that persons engaged in the business of the industries described . . . should practice concerted acts with respect to the restriction of standards or the restriction of technology, in case he deems it especially necessary in order to accomplish the target of rationalization . . . The Competent Minister may give direction that persons engaged in Industries Requiring Rationalization . . . should practice the concerted acts with respect to restrictions of kinds . . . or utilization of production facilities . . . in order to accomplish the target of rationalization."

This law has facilitated the rationalization of the major final electronics systems market among the major firms. "Intraindustrial specialization" allows each firm to control different product segments and to maximize economies of scale and production cost efficiencies. These firms also control over 60 percent of semiconductor consumption. Thus, through controlling the pace and direction of demand growth, they control the share and influence of imports.

The most significant Japanese advantage is the stable availability of capital. Japanese firms have debt-equity ratios of 150 to 400 percent, compared to ratios of 5 to 25 percent for U.S. firms. This is a result of close cooperation between the government and lending banks, the industrial groupings around large banks, and the fact that market rationalization and oligopolization make Japanese firms a secure investment risk. Stable access to capital allows Japanese firms to utilize longer planning horizons, as they are not as dependent on short-term earnings.

Government support and easy access to low-cost capital allow Japanese producers to sell key commodity products in our market at very low prices; sometimes below the cost of production. The consequences in terms of price and market share are disastrous. Semiconductor prices in the United States until very recently have followed a traditional learning curve pattern, with prices declining steadily over time, as output expands and efficiency is achieved through experience. Our price per bit of memory has declined at a classic rate of about 30 percent for each doubling of production volume, tracing a very steady, healthy downward slope. A more dramatic way of putting it is that between 1973 and 1981, we succeeded in reducing our cost per RAM (Random Access Memory) bit by about 97 percent.

When the Japanese entered the 64K RAM market in October of 1980, our price curve dropped from a 70 percent to a 19 percent slope. During 1981, the price of the 64K RAM fell from $25 or $30 per device, to about $6. The result of this dislocation in learning curve pricing will cost the industry billions of dollars in revenue. (See Figure 1)

The U.S.-Japan trade balance for semiconductors illustrates just how successful—and how disastrous—these policies have been. Imports from Japan in 1981 climbed to nearly 400 million dollars, while exports to Japan remained flat. (Figure 2) This represents a complete reversal of our trade position with Japan.

The impact of these policies on U.S. producers and sellers is brought home by examining the experience of a particular product. The J.E.C. study mentioned above pointed out that in an open market, the sales level of a U.S. producer selling a

unique product in a foreign market would gradually drop off to a reduced market share after foreign production began. The study pointed out that if U.S. sales of a product instead fall off rapidly to virtually nothing once foreign production begins, that would be evidence of a closed market.

As Figures 3 and 4 indicate, preliminary analysis of sales of an actual product—the 8080 type microprocessor—appears to illustrate this phenomenon. As shown in Figure 3, U.S. sales of this product to Japan dropped to virtually nothing shortly after the Japanese introduced a competitive product. This is contrasted with the effect of Japanese entry on U.S. worldwide sales, as shown in Figure 4.

Although Japan represents the most serious threat from targeted industrial policies, we are seeing the pattern repeat itself in other countries. In Europe, restrictions on U.S. trade and investment are proliferating, with the perverse effect that European industry is becoming less, not more, efficient. In the newly industrialized countries, there is an effort to follow the Japanese model, with the result that U.S. firms are being closed out of the key growth markets unless they accept highly restrictive conditions.

THE EROSION OF INVESTOR CONFIDENCE

The impact of such foreign industrial policies that concerns us most is the resultant erosion of investor confidence in the U.S. high technology industries. Innovation-driven industries give rise to capital expenditures on research, with resultant social benefits in terms of productivity, employment and a balanced budget. Trade and investment distorting foreign government policies distort this equation, however, and the social benefits are diverted abroad.

Little incentive exists for investment in industries unfairly targeted by our major competitors. The chief executive officer of one of the largest semiconductor manufacturers recently stated that his company would not invest in the production of the 64K RAM, due to the lack of predictability.

We cannot allow history to repeat itself. Due largely to lack of investor confidence, the benefits of the market for consumer electronics were diverted abroad. To a significant extent, eroded investor confidence has denied us benefits in the auto and steel industries.

High technology industries must be perceived as secure investment risks. Unless the government negotiates away the barriers the proposed bills address, the cost of capital bears an unacceptably high risk premium.

THE U.S. RESPONSE

A reactive strategy of the part of the government will be ineffectual. The Japanese Government's strategy in this area has been called "predictive and preemptive". The high technology language in the bills before you will serve as an initial step toward achievement of a predictive, preemptive and productive approach on the part of the United States.

Immediate steps are essential if extraordinary damage is to be avoided to the creation and development of the industries of the future which held the greatest promise for mankind. Immediate expansion of foreign market access can be achieved through negotiated bilateral agreements to eliminate existing barriers to high technology trade and investment.

Nothing less than a comprehensive approach to the problems peculiar to high technology is called for. More than any other group of industries, high technology industries are the target of foreign government policies of protection and promotion and of the new forms of nontariff barriers that have given rise to the proposals before you.

High technology industries are affected more severely than most industries by the new forms of market barriers this bill addresses. The continued viability of many high technology industries, like that of the semiconductor industry, is largely contingent on the ability of producers to compete on a global scale. We need open international markets because of the size and distribution of the world market, because of the nature of our production process, and most importantly, because of the available economies of scale and our need for investment capital.

Foreign markets account for half of the total value of semiconductors consumed worldwide. This fact alone underscores the importance of these markets for American firms. Of total worldwide consumption of 15 billion dollars worth of semiconductors in 1981, 9 billion dollars represents foreign markets. Of these, the fastest-growing foreign markets—those of the EC and Japan—are not fully open to us. We need the volume represented by these markets in order to stay on the learning curve and

capture cost efficiencies. We need to be able to compete on an equal basis in those markets with domestic producers.

It is our hope that bilateral agreements will lead to the establishment of a comprehensive multilateral framework for dealing with high technology issues.

A strong precedent exists for this type of approach. Multilateral agreement on a sectoral issue has been achieved within GATT in the area of civil aircraft. The 1979 Agreement on Trade in Civil Aircraft provides an excellent model and precedent for multilaterial focus on high technology issues, due to the significant parallels between the two sectors in industry importance, types of problems, and mutuality of benefits. Like the high technology sector, the U.S. civil aircraft industry had been dominant internationally since its inception. In the late seventies, this position was seriously challenged by foreign competition stemming in large part from foreign government subsidization, restrictions on market access, and a range of unfair trade-distorting policies and practices. Like the high technology industry, the civil aircraft industry is of particular importance to the U.S. economy and trade balance, and is peculiarly dependent on access to world markets. As with high technology, international agreement would benefit the industries and economies of all nations.

GATT members were able to reach agreement establishing a framework to govern trade in the civil aircraft sector. The agreement is directed at eliminating the adverse effects of a myriad of trade-distorting measures, encouraging continual worldwide innovation, and ensuring that producers of all signatory nations are provided fair and equal competitive opportunities. The high technology sector is an even stronger candidate for international negotiation and agreement.

The combination of legislative measures in the bills before you—H.R. 6433 and H.R. 6773—contain the ingredients necessary for achieving substantial progress in dealing with the problems of high technology trade and investment, and may form the foundation for a comprehensive, multilateral solution. These measures are urgently needed, and we emphasize the importance of their early enactment.

FIGURE 1.

Learning Curves,

Price per Bit vs. Cumulative Volume in Bits

Mos Dynamic RAMs

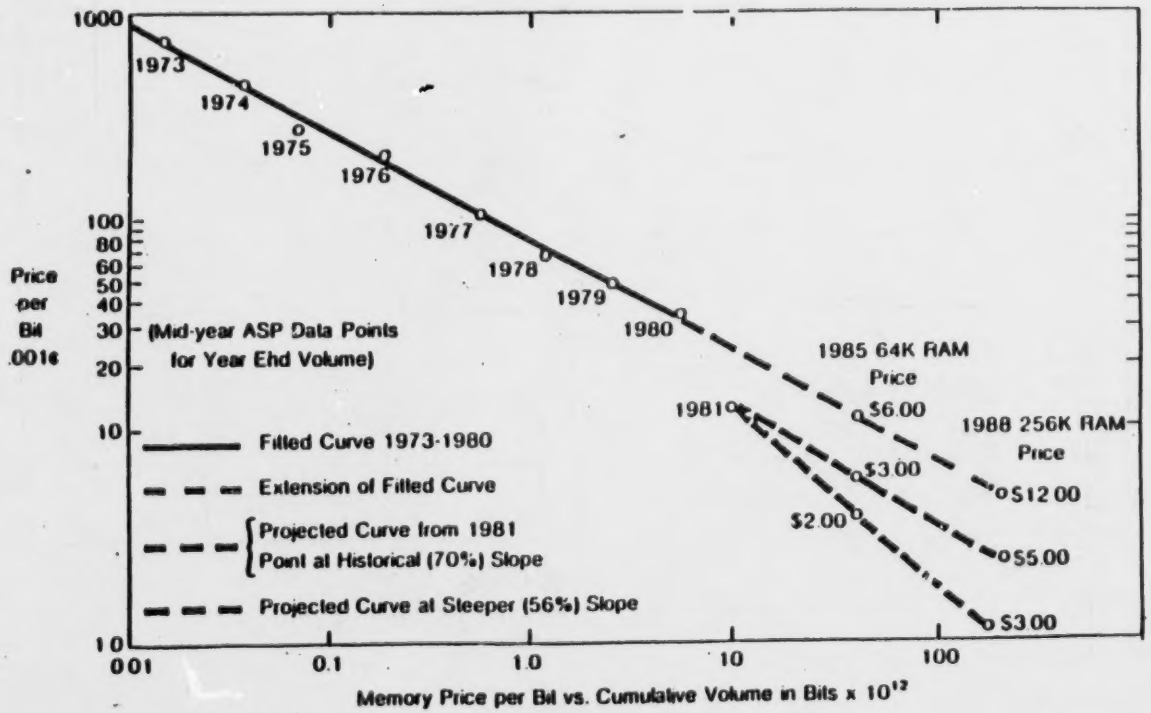
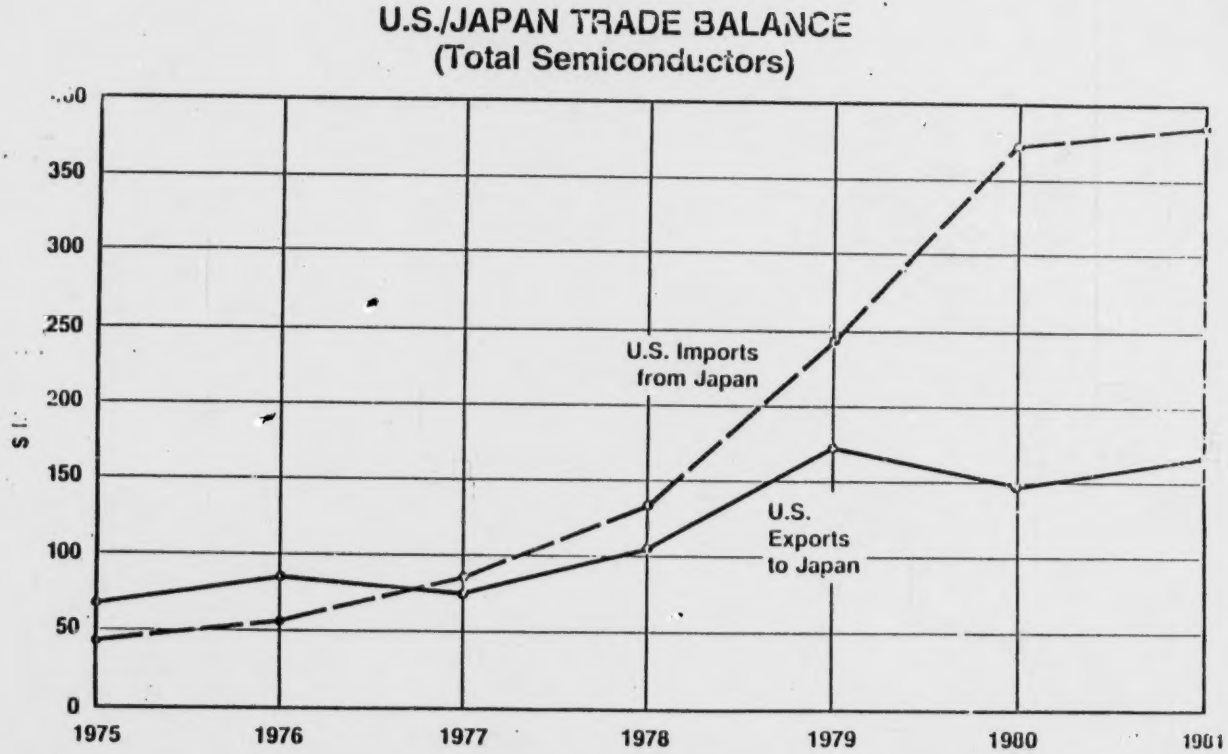


FIGURE 2


U.S./JAPAN TRADE BALANCE
(Total Semiconductors)
350
300
250
200
150
100
50
0
1975
1976
1977
1978
1979
1980
1981
U.S. Imports from Japan
U.S. Exports to Japan
Data: U.S. Dept. of Commerce
March 1982

ESTIMATED UNITED STATES BOOKINGS OF 8080 TYPE MICROPROCESSORS TO JAPANESE MARKETS

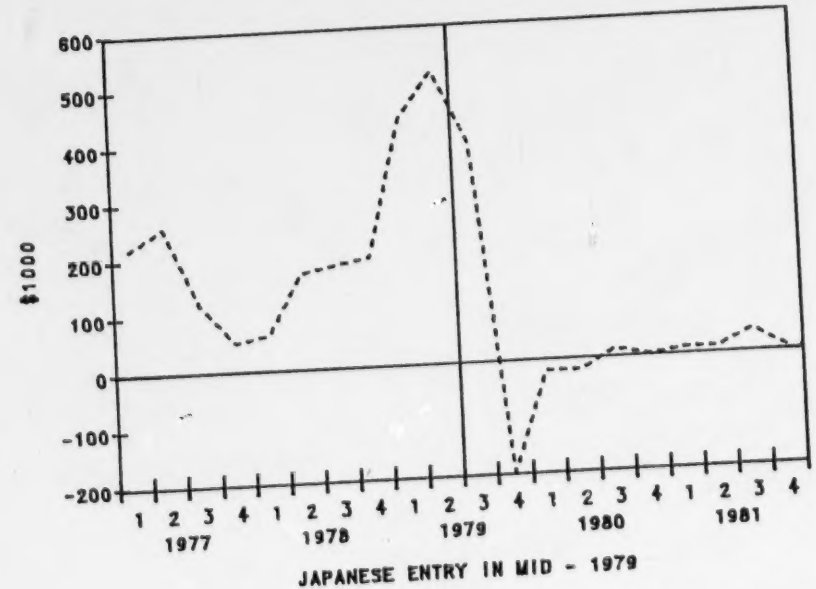


FIGURE 3

99-631 322

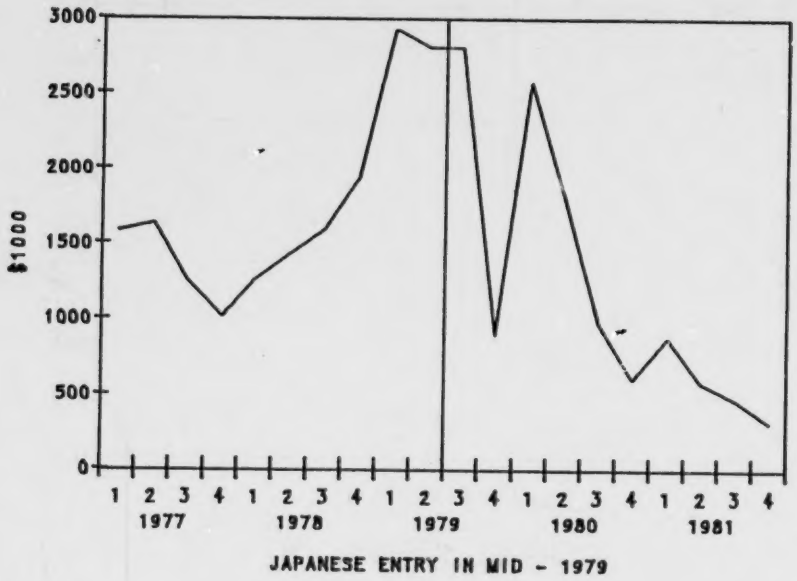


FIGURE 4

99-631 323

Chairman GIBBONS. Mr. Best.

STATEMENT OF EDWARD J. BEST, DEPUTY MANAGER, INSTRUMENT GROUP, PERKIN-ELMER CORP., SCIENTIFIC APPARATUS MAKERS ASSOCIATION

Mr. BEST. Thank you.

My name is Edward Best, I am deputy manager of the Perkin-Elmer Corp. We have sales of over a billion dollars and is very much a part of the high technology industry.

We are the major suppliers of projection equipment used by semiconductor manufacturers throughout the world. We are generally acknowledged to be the largest supplier of analytical instruments in the world; 45 percent of our business is abroad, so we are highly dependent on international trade.

I am appearing before you this afternoon on behalf of the Scientific Apparatus Makers Association, SAMA, as it is called. I have described in my prepared remarks the membership in industries that SAMA represents, and the favorable balance of trade that we enjoy.

Let me begin by expressing SAMA's thanks and our appreciation for your continuing interest and that of the subcommittee in the international trade and investment problems which confront the high technology electronics sector of the American business community.

I would like also to ask that my prepared statement be inserted into the record.

Chairman GIBBONS. Yes, sir, it will.

Mr. BEST. Mr. Chairman, ours is not a moribund industry. In the past 3 years, the U.S. exports of scientific, industrial, and medical instruments have increased by almost $2 billion. As you can see from the chart on page 4 of my prepared statement, imports of instruments and apparatus have also increased by 36 percent in the past 3 years, however we have maintained a favorable ratio of 3 to 1 exports over imports.

Despite recent softening in international markets and increased competition, we are confident we will maintain our competitive position. The degree of our success, however, will be highly depending on actions that the Congress takes in the coming weeks, as well as actions taken by the executive branch.

It is in this context, Mr. Chairman, that SAMA believes your hearings are very timely. If SAMA member companies are to be as competitive in the future as we have in the past, we believe this country must adopt a consistent overall policy which will, one, promote the twin principles of free and fair market access abroad; two, build effective long-range economic policies to stimulate and maintain U.S. technological leadership.

Given this framework, let me express SAMA's views on some of the specific needs, both present and future, which we believe must be addressed by the Congress and the executive branch.

In the near term, we believe it is now the time for the United States to do all it can to resist protectionism here and abroad by working to shore up the GATT system, and to expand the system of international rules to cover foreign investment and services.

By initiating and passing appropriate legislation, Congress can provide negotiators with the policy guidance and statutory backup they need to be successful in meeting the challenge of continued expansion of world markets. H.R. 6433, the proposed High Technology Trade Act, provides the negotiating mandate required to achieve this objective.

We want to use this occasion to remind the subcommittee that, in May of this year, SAMA strongly endorsed this bill. The major provisions of the High Technology Trade Act have been incorporated into sections 5 and 8 of S. 2094, which has recently been reported out of the Senate Finance Committee.

SAMA supports this legislation. H.R. 6773 recently introduced by Mr. Frenzel, closely resembles S. 2094 with the major exception of the tariff-cutting authority presently contained in S. 2094. We hope that this subcommittee as it considers the provisions of H.R. 6773, a bill that we can support, will also consider adding tariff-cutting authority for high-technology products.

Enactment of the High Technology Trade Act or incorporation of its provisions in another trade bill will represent but a first step in a series of other considerations which will be essential if our sector is to remain truly competitive in world markets, thus continuing to provide jobs in the United States, contributing to a favorable balance of trade, and to play a role in the development and production of our national security base.

In this context, now might be the time for you and the Congress to begin to look at what might constitute a national policy for high-technology industries, time to pinpoint objectives and develop strategies to achieve these objectives.

Our competitors in the other industrial nations are being helped extensively by their governments. This has permitted them to catch up on our technology, and to compete more effectively with us abroad and at home.

These nations have strategies and they are working on them every day. Let me review some of the elements that I believe might be considered in the formulation of a U.S. national policy.

Our industries require skilled engineers and scientists to conduct research, design the end products, and develop the manufacturing processes necessary to build them at an economical cost and with acceptable reliability. We will not find the people we need if our children are not adequately trained in science and mathematics.

Our universities need an adequate and dedicated teaching force, and their laboratories must be equipped with the modern instrumentation and computers.

On page 8 of my prepared statement, I have indicated several ideas as to how U.S. industry and Government might work in a less adversarial way to maintain our competitive posture in world markets.

Let me emphasize just one of these.

It will do our industries no good whatsoever if our Government moves to open markets that have been closed to us and then through the imposition of obsolete U.S. unilateral export controls prevents U.S. firms from selling into these markets. This is exactly what is happening today, and it is costing my company and others in the high-technology electronics sector jobs and business.

A complete review of U.S. export control policy is urgently needed, and it appears to us that the leadership for revision of present policies will have to come from the Congress.

In addition to becoming less adversarial, I believe it is important for both you and I to recognize that our industries will need the support of Government in certain areas in the coming years. For example, support will be necessary to increase the current level of basic research. In this context, we are aware of the fact that some members of the Ways and Means Committee are considering a proposal to cut back the tax credit for research and development, which was approved in 1981. This would be accomplished by adopting a deduction allowance for amounts equal to the credit.

This proposal is equivalent to reducing the rate of credit from 25 to 13½ percent. This reduction would have a profound impact on the competitive posture of SAMA members in world markets in the years ahead.

We are strongly opposed to this proposal and hope the members of the subcommittee will vote against it.

Finally, Mr. Chairman, we believe it is important to remind this subcommittee that it is our view that the executive branch, and to a certain extent the Congress, will have to be more aggressive in obtaining our country's rights under international agreements.

I have cited one example where greater aggressiveness would be of particular interest to companies in my industry, that being the Florence agreement and the difference between the implementation of that agreement within the community and the United States.

It is my understanding that this subcommittee may be looking more closely into the ramifications of this treaty in the coming months, and I would like to offer that SAMA would be happy to work with you and your staff on this issue.

In conclusion, I think we should all remember that the United States is the largest single market in the world. Access to it is important to all of our trading partners. Accordingly, we should take an aggressive position with regard to negotiating the new international agreements and services investment in high technology, such as authorized in H.R. 6433, or H.R. 6773.

Thank you.

[The prepared statement follows:]

STATEMENT OF EDWARD J. BEST, THE PERKIN-ELMER CORP., ON BEHALF OF THE SCIENTIFIC APPARATUS MAKERS ASSOCIATION

Mr. Chairman and Members of the Committee, my name is Edward Best, and I am Deputy Manager of the Instrument Group of the Perkin-Elmer Corporation which is headquartered in Norwalk, Connecticut. Perkin-Elmer, with sales of one million dollars, is very much a part of the high technology sector of U.S. industry. We are the major suppliers of projection equipment used by semi-conductor manufacturers throughout the world. We design and manufacture mini-computers and are generally acknowledged to be the largest supplier of laboratory, analytical instruments in the world. With 45 percent of its business abroad, Perkin-Elmer is highly dependent on international trade.

I am appearing before you today on behalf of the Scientific Appraratus Makers Association (SAMA).

SAMA is a national trade association representing this country's manufacturers and distributors of a wide range of scientific, industrial and medical instruments and equipment. The 180 companies who are SAMA members, many of small or moderate size, constitute the bulk of American industry producing reseach laboratory,

analytical, electronic test and measurement, and process measurement and control instruments, as well as clinical laboratory instruments, patient monitoring instruments, and a wide range of laboratory apparatus and equipment.

In 1981, the industries represented by SAMA produced and shipped products valued at over $12 billion and employed in excess of 250,000 in the U.S. Exports accounted for about one-third of total sales, although in some SAMA companies like my own, international business may amount to 40–50 percent or more of total sales. Since over a third of total sales are exported, it seems obvious that a substantial number of the jobs of the more than a quarter of a million U.S. workers employed by SAMA members are directly dependent on international trade and thus on the competitiveness of the United States in world markets.

Let me begin, Mr. Chairman, by expressing SAMA's thanks, and our appreciation for your continuing interest, and that of the Subcommittee, in the international trade and investment problems which confront the high technology electronics sector of the American business community.

I am confident that the high technology electronics industries represented here today represent some of the strongest positive contributors to the U.S. balance of trade. The other association participating on this panel will describe its own contribution in this regard. Let me spend a moment describing those of SAMA.

In the past three years—1979, 1980 and 1981—U.S. exports of scientific industrial and medical instruments and equipment increased by almost $2 billion. Exports in 1979 amounted to $5.33 billion, while in 1981 exports increased to $7.30 billion. Between 1979 and 1980, exports of instruments jumped 22 percent, while between 1980 and 1981, exports increased by 13 percent.

It should be noted that imports of instruments and other equipment and apparatus also increased 36 percent in the past three years although the ratio of exports to imports remains at a very high three to one ratio. (See Table 1).

Despite a recent softening in international markets, SAMA is not coming before the Subcommittee with its hat in its hands. We expect to have continued success in our ability to compete abroad.

The degree of our success, however, will be highly dependent on actions that the Congress takes in the coming weeks as well as actions taken by the Executive Branch. It is in this context, Mr. Chairman, that SAMA believes your hearings are very timely. If SAMA member companies are to be as competitive in the future as they have been in the past, we believe this country must adopt a consistent overall policy which will:

1. Promote the twin principles of free and fair market access abroad, and
2. Build effective long range economic policies to stimulate and maintain U.S. technological leadership.

Given this framework, let me express SAMA's views on some of the specific needs—both present and future—which we believe must be addressed by the Congress and the Executive Branch.

TABLE 1.—U.S. TRADE OF SCIENTIFIC, INDUSTRIAL AND MEDICAL INSTRUMENTS AND EQUIPMENT

[Dollars in millions]

	Exports				Imports			
	1979	1980	1981	Percent change 1980–81	1979	1980	1981	Percent change 1980–81
I. Engineering, electrical testing and optical instruments:								
Engineering and scientific instruments SIC 3811	$789	$964	$997	+3	$125	$189	$273	+44
Electronic signal measuring instruments SIC 3825	1,025	1,324	1,506	+14	423	398	445	+12
Optical and analytical instruments SIC 3832	593	691	1,077	+56	393	413	605	+46
Total	2,407	2,979	3,580	+20	941	1,000	1,323	+32
II. Instruments for measuring, analysis, and control:								
Process control instruments SIC 3223	515	661	773	+17	75	170	199	+17
Fluid meters and counting devices SIC 3824	82	89	113	+27	63	57	60	+5
Measuring and controlling devices SIC 3829	736	879	644	−27	57	117	47	−60
Total	1,333	1,629	1,530	−6	195	344	306	−11

TABLE 1.—U.S. TRADE OF SCIENTIFIC, INDUSTRIAL AND MEDICAL INSTRUMENTS AND EQUIPMENT—Continued

[Dollars in millions]

	Exports				Imports			
	1979	1980	1981	Percent change 1980–81	1979	1980	1981	Percent change 1980–81
III. Surgical, medical, and dental instruments:								
Surgical and medical instruments SIC 3841	410	485	566	+17	146	173	195	+13
Surgical appliances and supplies SIC 3842	258	309	356	+15	105	94	94	0
Dental equipment and supplies SIC 3843	101	126	140	+11	42	41	50	+22
Ophthalmic goods SIC 3851	99	114	122	+7	245	278	300	+8
X-ray and electromedical equipment SIC 3693	707	839	1,006	+20	275	312	388	+24
Total	1,585	1,873	2,190	+17	813	898	1,027	+14
Total trade	5,325	6,481	7,300	+13	1,949	2,242	2,656	+18

Source: SAMA U.S. Imports and Exports Statistics Report, June 1982.

OBJECTIVES OF TRADE LEGISLATION

SAMA has analyzed carefully the bills introduced by members of this Subcommittee and by others in the Congress. We believe now is the time for the U.S. to do all it can be resist protectionism here and abroad by working to shore up the GATT system and to expand the system of international rules to cover foreign investment and services. By initiating and passing appropriate legislation, Congress can provide our negotiators with the policy guidance and statutory backup they need to be successful in meeting the challenge of continued expansion of world markets.

H.R. 6433, the proposed "High Technology Trade Act," provides the negotiating mandate required to achieve this objective for U.S. high technology firms. The legislation accomplished three main purposes:

1. It provides a mandate for major new international negotiations to open foreign markets for U.S. high technology trade and investment, as well as the means for the U.S. to implement its side of any agreement.

2. It provides a method for dealing with foreign measures, particularly industrial policies which distort international high technology trade and investment.

3. It permits the discretionary application of U.S. legal remedies whenever negotiated solutions prove impossible.

This legislation is clearly distinguishable from narrowly focused sectoral reciprocity legislation. It is not designed to achieve a bilateral balancing of trade but rather to authorize reciprocal elimination of barriers on a broadly based product sector.

The major provisions of the High Technology Trade Act have been incorporated into Sections 5 and 8 of S. 2094 which has been recently reported out of the Senate Finance Committee. SAMA supports this latter piece of legislation. H.R. 6773, recently introduced by Mr. Frenzel closely resembles S. 2094 with the major exception of the tariff cutting authority presently contained in S. 2094. We hope that this Subcommittee, as it considers the provisions of H.R. 6773, a bill which we could support, will also consider adding tariff cutting authority for high technology products.

FUTURE CONSIDERATIONS

The most significant point, in our view, with respect to either H.R. 6433 or Sections 5 and 8 of H.R. 6773 is the fact that, for the first time in U.S. trade legislation, recognition is given to the high technology sector of American industry. As a nation, it is essential for this sector to be truly competitive in world markets to provide jobs, to contribute to a favorable balance of trade and to maintain and strengthen an industrial base capable of developing and producing advanced military systems.

However, the authority to negotiate agreements and monitor NTB's, etc., as provided in H.R. 6433 or Section 5 of H.R. 6773, while important, may not be enough. This may be the time to consider the need for a national policy for high technology

industry and trade: a time for pinpointing objectives, and developing a strategy to achieve them.

Our competitors in the other industrial nations are being helped extensively by their governments. This permits them to catch up in their technology and to complete more effectively with us abroad and in our own market. These nations have strategies and are working on them every day. Let me review some of the elements that I believe might be considered in the formulation of a U.S. national policy.

Education.—Our industries require skilled engineers and scientists to conduct research, design the end products and develop the manufacturing processes necessary to build them at an economical cost and acceptable reliability.

We will not find the people we need if our children are not adequately trained in science and mathematics. Our universities need an adequate and dedicated teaching force and their laboratories must be equipped with modern instrumentation and computers.

Industry-Government Relationships.—Our competitors in Japan and Europe enjoy a close relationship with their government, whereas in the U.S., this tends to be more adversial. There are a number of ways to improve this situation in the U.S. Here are four areas that occur to me:

Legislation could be adopted to remove the uncertainties related to joint industrial research programs under the anti-trust laws.

The use of Industrial Sector Advisory Committee's could be expanded to provide for their review and recommendations on investment and service policy, export controls, and export promotion plans.

U.S. unilateral export control policies and procedures currently represent a significant disincentive to U.S. high technology exporters and could be significantly reduced. If they are not, our competitors will get our business.

Present customs classifications and resultant data collection could be made more sensitive to trade in high technology products. The lifetime of high technology products is relatively short. Today's state-of-the-art products will not be part of the data base in 1987.

Government Support.—The development of a national policy for high technology could require direct government funding and/or tax incentives in certain areas. For example:

To increase the current level of basic research in the U.S.

To reduce the cost of product and process development and the cost of capital equipment, especially in areas where products and processes quickly become obsolete as technology advances.

Aggressiveness.—The U.S. may need to become more aggressive in obtaining its rights under international agreements and federal statutes.

Let me cite one example where this may be the case.

For some time, SAMA has been deeply concerned over the failure of the European Community to carry out properly the terms of the Florence Agreement which permits the duty free entry of scientific products into participating countries. In particular, the EC has refused to evaluate U.S.-manufactured instruments for duty-free entry into the EC on the same fair basis as the United States uses to evaluate European instruments for duty-free entry into the United States. The lack of reciprocal treatment by the EC of instruments manufactured in the United States has seriously damaged the ability of U.S. exporters to compete for sales of scientific instruments to European non-profit institutions. As a consequence, these U.S. firms must choose between withdrawing from the institutional market abroad or establishing a manufacturing operation in the EC. Yet the same U.S. companies find that European instrument manufacturers are readily able to sell to the U.S. institutional market by relying on the duty-free tariff provisions administered in good faith by the United States.

CONCLUSION

The U.S. is the largest single market in the world. Access to it is important to all of our trading partners. Accordingly, we should take an aggressive position with regard to negotiating the new international agreements in services, investment, and high technology, such as authorized in H.R. 6433 or H.R. 6773.

Chairman GIBBONS. Thank you, gentlemen. Once we get this bill passed, the first thing we are going to ask you to do is come back and see if you can find a way to control the temperature in this room.

I don't know. My legs get so stiff; it gets so cold up here, it is hard to even move.

One of the things that has, I think, disturbed Americans as much as anything I know of about trade has been the problems of industrial espionage.

While that is really foreign to this discussion, it is something that has continued to poison the well as far as United States-Japan relations are concerned.

Is this kind of practice something that you see often in your industries, your high-tech industries?

Mr. SCALISE. I am not aware of a large number of instances where this has occurred. We all do the best we can to protect our trade secrets, be they design or process. As a result of that, I think we have done a pretty good job of taking care of that issue.

It is something that we hear more about, I think, in many instances than perhaps occurs, but I gather from some recent press coverage there are some instances where, without question, it does go on. It is a concern. It is something that we constantly guard against.

Mr. BEST. I am not aware, in our sector, of any real efforts in this area. It is more likely to be a case of recruiting employees of former competitors that we get into this problem. It is not the same by any means, as outright espionage.

Chairman GIBBONS. Do you have any suggestions as to what we could do, perhaps, to protect the integrity of industrial secrets of American firms which need to be protected.

Mr. BEST. I think it is a matter of careful controls and administrative procedures, but we don't have the force of national security to work with. I guess there is always a possibility that an individual employee can be bought because of some weakness. I don't know how to protect against that.

Mr. SCALISE. I would think by and large the laws and the measures currently available would be adequate to protect against it. It is like so many things: If there is someone intent on going about it in a dishonest way, if he is aggressive enough, I guess he can find a means by which to achieve his ends. You have to constantly be vigilant and very aggressive about watching for those things.

Chairman GIBBONS. Do you find our patent laws sufficient to help you? Is the international observance of patent laws adequate in your industry?

Mr. SCALISE. Our patent laws appear to be adequate. That does not seem to be a problem. One of the areas we are currently investigating is a modification of the copyright laws. We have some draft legislation in that regard that covers, in the case of semiconductor components, the topography being utilized.

One of the ways that someone can reverse-engineer a part is to essentially photograph it and then reverse back through that whole process. If we could copyright that topography, that could limit their ability to reverse-engineer.

There are some problems associated with that, but, nonetheless, we think there is something that needs to be done in that area and not in patents, from our standpoint.

Mr. BEST. I don't think in the sector of the industry that I represent, in SAMA, that patents are a big issue. There are a few funda-

mental inventions that are crucial, but basically it is the newer product with the newer features that by and large are user conveniences.

Chairman GIBBONS. Mr. Frenzel?

Mr. FRENZEL. Thank you, Mr. Chairman.

It is good to have Ambassador Wolff back with us. I appreciate the testimony of both of you.

The Chairman and I are pleased you have taken your testimony beyond the scope of what we are talking about, both with respect to R&D tax incentives and with respect to the educational environment in which we hope to grow our engineers and mathematics in the future.

I think the testimony is well taken.

I take it both of you would prefer the House bill if it conformed more closely to Senator Danforth's version. Is that correct?

Mr. SCALISE. Yes.

Mr. FRENZEL. You would like to get the high-tech negotiating authority back in?

Mr. SCALISE. Absolutely.

Mr. FRENZEL. Other than that, is it satisfactory to you?

Mr. SCALISE. Yes. I think it contains most of the concerns we had in the high-tech area.

What we were really looking for were the points along the line of national treatment and a fast track method of getting the negotiations going to solve these problems before they become hopeless.

So, yes, we are satisfied with the version that has been placed in the House. We would prefer to have the tariff cutting authority in there, but if you see reason why that should be put into another bill, I guess we could live with that, certainly.

It is our industry's opinion that we really want a free trade arena. To that extent, we are prepared to eliminate tariffs in our industry. We are not looking for protection of any kind. Consequently, we support a tariff reduction in the bill.

I would like to make one other comment, incidentally, on the R&D tax credit. One of the things the semiconductor association has done in the past year is we have formed a research cooperative with several companies in this now, and it has now been incorporated.

We will fund our first R&D grants here in the fall. This year, we plan to contribute about $6 million to this program. It will consist of university funding for basic research and teaching. We hope over the next several years to expand this to about $20 million of funding per year.

I think, to a very large degree, we generated this program and founded this organization because of the incentives that came out of that tax bill.

I think that is one very graphic example of the reaction to the tax bill of this past year.

Mr. FRENZEL. Good. I am glad to hear that. As I recall, in the Senate tax bill you lose some credit for leasing; isn't that the problem?

Mr. SCALISE. We also lose R&D credits.

Mr. FRENZEL. The Senate picked up the Treasury's complaint, which was rejected here in the House.

I am sure we will try to defend you in that respect. I hope we were serious when we put it in.

Also, I would like to thank you for your good counsel about the negotiating authority. My judgment is this Congress will be lucky to pass one bill this year. We would be well advised to tuck everything that seems necessary into one bill; however, we may achieve that business.

Thank you very much.

Chairman GIBBONS. Thank you.

Mr. SCALISE. Thank you.

Mr. BEST. Thank you.

Chairman GIBBONS. We have a panel of witnesses to conclude: Mr. Hollands, Mr. Arries, and Mr. Cohen, representing the broadcasting industry and the problems of border broadcasting.

STATEMENT OF KERMIT W. ALMSTEDT, COUNSEL, WOMETCO ENTERPRISES, INC.

Mr. ALMSTEDT. I am Kermit Almstedt, counsel for Wometco Enterprises. We will take the admonition of the chairman and will briefly summarize all of our prepared statements.

I would like to take a few minutes to put the issue in perspective and introduce the panelists and indicate the areas they will address.

In 1976, Canada enacted legislation known as C-58, which denies a tax deduction to Canadian businesses for advertising placed with U.S. broadcast stations. The effect of this legislation, was to place a 100-percent tariff on the sale of U.S. advertising services. This equates out to be approximately $20 million to $25 million annually in lost revenues to U.S. broadcasters and an attendant decline in asset value of the affected stations.

Dick Hollands, second to my right, the vice president of the broadcasting division of Wometco Enterprises, and licensee of Bellingham, Wash., station KVOS-TV, will talk in more detail about the impact of the Canadian legislation.

The response to the U.S. border broadcasters to the Canadian law was twofold. First, they attempted to resolve the problem through private negotiations. The Canadians were intransigent, the negotiations failed.

Les Arries, president of Buffalo Broadcasting and general manager of station WIVB-TV, Buffalo, N.Y., will take a few minutes to discuss the private negotiations and what transpired.

Following this effort in 1978, several U.S. stations filed a section 301 complaint. As a consequence two Presidents determined that the Canadian legislation was unreasonable and violated section 301 of the Trade Act of 1974, and recommended to the Congress enactment of mirror legislation. Sheldon Cohen, at the end of the table, will discuss the use of the section 301 process.

The issues in the border broadcast case—which is 6 years old now—are twofold: First is the question of injury to a U.S. service industry through a foreign nontariff trade barrier and redress of that harm. The U.S. border broadcast have a compelling case on the merits for relief as two Presidents have found.

The second issue is the integrity and future viability of the section 301 process. The U.S. border broadcasters utilized the process which this Congress gave to them in the 1974 Trade Act. As you know, section 301 is one of the very few legal mechanism which the U.S. service industry can invoke to gain relief from restrictive foreign trade practices. The border broadcast case is the first section 301 case to proceed to a Presidential recommendation asking for a reciprocal response or retaliation. Of the some two dozen section 301 cases that have been investigated since the 1974 Trade Act took effect, only three cases have gone to the President for retaliation, and in only one case has the President chosen to recommend retaliation, and that is in the border broadcast case. It has, therefore, assumed great symbolic importance for U.S. service exports.

The problem, if I may summarize, is simple: To date, the United States has given Canada no reason to be other than intransigent on the issue. The question has to be asked, therefore, what must be done to resolve the problem? Is passage of mere legislation enough? Must something else occur?

I find it quite interesting that in the earlier colloquy between Congressman Conable and Ambassador Macdonald, it was indicated that something more had to happen; that one had to expand the mirror legislation to bring the Canadians to the negotiating table. The Canadians must be made to realize that it is in their own best interests to negotiate now. The reason is simple: not only do U.S. border broadcasters deserve relief, but the integrity of the section 301 process is at stake.

STATEMENT OF DICK T. HOLLANDS, VICE PRESIDENT, WOMETCO ENTERPRISES, INC.

Mr. HOLLANDS. KVOS-TV in Bellingham, Wash., is the border station which has suffered the greatest loss of all the border stations. Just as a matter of geography, a higher proportion of viewers of KVOS are Canadian than any other U.S. station. I want to point out as soon as KVOS started broadcasting, it established a Canadian subsidiary, KVOS-BC, Ltd., and through this tax presence, has paid Canadian taxes on all income generated from Canadian sales since 1955.

My prepared statement describes the financial effect of C-58 on KVOS. It is very, very substantial.

Let's examine how it actually works in practice in the marketplace of Vancouver-Victoria-Bellingham. A 30-second commercial on KVOS, which might command $100 from a Canadian advertiser, must be discounted by KVOS, because the Canadian Government will not allow a tax deduction to the Canadian advertiser. Therefore, we receive approximately $50 of that $100. A competitor in Canada for the same or similar spot would receive the full $100.

When a television program is offered for exhibition in the broadcasting market of Vancouver-Victoria-Bellingham, there is no way KVOS can compete with stations to the north since the potential revenue that KVOS can get from that program is only about half of the others.

Therefore, KVOS cannot compete effectively in this open market for programing and, as a result, KVOS viewers, both those in

Canada and in the United States suffer and the very essence of the station is diminished.

Insofar as we can see, C-58 has failed to achieve its stated objective of providing more Canadian programing or Canadian production. What it has done is hurt KVOS, helped our competitors, and provided more taxes to Revenue Canada.

Along with the other border broadcasters, we have tried to negotiate this issue over the years, without success. We have been told by two U.S. Presidents and virtually everyone who has studied this matter, that we are right; that this is unjust and unreasonable. Yet, there is no relief after 6 years. That is why we ask this committee to take action which will finally resolve this inequitable and damaging situation.

[The prepared statement follows:]

STATEMENT OF DICK T. HOLLANDS, VICE PRESIDENT, WOMETCO ENTERPRISES, INC.

SUMMARY

KVOS-TV is licensed by the FCC to serve Bellingham, Washington. After KVOS-TV went on the air in 1953, representatives of several Vancouver advertising agencies, as well as potential viewers, suggested to KVOS-TV that it shift its tower to permit a clear signal to be provided to British Columbia viewers. As a result, in late 1954 KVOS-TV moved the transmitting tower to its present location to accommodate this concern.

The station incorporated a Canadian subsidiary in British Columbia in 1955 to handle its Canadian business, KVOS-TV (B.C.) Ltd. The "tax presence" has resulted in KVOS-TV (B.C.) Ltd. paying Canadian taxes on all its income from advertising revenues received from Canadian sources since mid-1955. From 1965 to 1975, KVOS-TV (B.C.) Ltd., and related ventures injected more than $75 million into the Canadian economy. KVOS-TV (B.C.) Ltd. also contributed to the program production industry in Canada by establishing and subsidizing what was, until 1977, the largest full-line film production enterprise west of Toronto. Canawest Film Production was unfortunately dissolved because of the severe adverse impact of Bill C-58 on KVOS (B.C.) Ltd.

KVOS has been more severely injured by Bill C-58 than any other U.S. station in terms of gross revenues lost. In 1975 Canadian revenues accounted for more than 90 percent of total KVOS-TV revenues. Our gross revenues declined from $7.4 million in 1975 to about $4.1 million in 1977, a decline of about $3.1 million dollars. Net revenues declined from $6.1 million in 1975 to just under $3.6 million in 1977. Our best estimate is that KVOS-TV has lost $20 million in gross revenues cumulatively from 1976 through 1981 as a result of Bill C-58.

KVOS has been forced to take a number of steps to minimize the impact of C-58. It cut its advertising rates by 46 percent--the average tax cost of major Canadian companies, mounted a four-month sales campaign in Canada, dropped CBS network programming from its prime time schedule to double its inventory of available spots, programmed as an alternative independent station, and phased out Canawest.

None of these impact figures describe adequately the tremendous impact C-58 has had on the ability of KVOS to compete in the marketplace to provide quality programming for our viewers. By being forced to compete for programming and viewers against stations which do not face the same limitations, our ability to compete over the long term has been further and further eroded. The impact falls most heavily on U.S. citizens who depend on KVOS-TV for information about their community, state and country and are unable to obtain as much information as they otherwise would be able to receive because the resources to provide that information are simply no longer there.

STATEMENT

My name is Dick T. Hollands, and I am Vice President, Broadcasting Division of Wometco Enterprises, Inc., the parent company of KVOS Television Corporation, which is the licensee of KVOS-TV in Bellingham, Washington. I appreciate the opportunity to testify before this Committee to discuss the history of KVOS-TV's in-

volvement in border broadcasting and describe the disastrous effects of Bill C-58 on KVOS-TV.

The service of KVOS-TV in Canada is incidental to our primary market, (Bellingham, Washington,) and at the request of Canadians. While we are licensed by the Federal Communications Comission to serve Bellingham and other markets in Washington State, our signal is received in Canada in conformity with the Canadian-U.S. Television Agreement of 1952, which allocated television channels between the two countries.

Since 1954 Canadians have wanted to make use of our signal. In 1953 KVOS-TV went on the air with a small, low-power homemade transmitter on a hill within the city limits of Bellingham. The station was intended to serve only the local and regional viewers of northwestern Washington.

After a year of operation it became apparent that British Columbia viewers and advertisers needed an additional TV outlets. They urged KVOS-TV, by letters phone calls, and personal meetings, to eliminate the deep ghosts in our signal caused by the Bellingham transmitter location.

Representatives of several Vancouver advertising agencies, as well as potenitial viewers, suggested to KVOS-TV that it shift its tower to permit a clear signal to be provided to British Columbia viewers. Existing demand for television advertising could not be filled by the province's only television station, a Canadian Broadcasting Corporation (CBC) venture in Vancouver.

As a result, in late 1954 KVOS-TV moved the transmitting tower to its present location on Orcas Island in the State of Washington, a location that was much closer to Vancouver and Victoria, British Columbia. The Federal Communications Commission approved the move which was made in conformity with the Canadian-U.S. Television Agreement of 1952. Neither the Canadian Government nor the private sector objected.

The station incorporated a Canadian subsidiary corporation in British Columbia in 1955 to handle its Canadian business, KVOS-TV (B.C.) Ltd. Canadian tax authorities agreed to use a tax base similar to that devised for Canadian radio station CKLW's U.S. sales corporation in the Detroit-Windsor area, which for many years has sold commercials purchased by American advertisers. I would like to emphasize that as a result of this "Tax presence" KVOS-TV (B.C.) Ltd. has paid Canadian taxes on all of its income from advertising revenues received from Canadian sources since mid-1955.

In 1961 Wometco Enterprises, Inc. purchased KVOS from its original owners. Like any other business making a major investment, we hoped to make a profit on the transaction. We assumed the risks of the free market. We hoped that viewers receiving our signal would like the product and that we would have an opportunity to compete for advertising dollars in the market-place. We did not believe that a developed country like Canada, with extremely close bilateral relations with the United States, would enact dicriminatoryu policies against our country, or, if that occurred, that the U.S. Government would not object in an appropriate manner. I want to emphasize that we have attempted to play a responsible role in the development of British Columbia and the program production industry of Canada.

KVOS-TV (B.C.) Ltd. has been staffed by Canadian citizens and residents and has systematically reinvested substantial amounts of profits in British Columbia. In the ten-year period from 1965 to 1975, KVOS-TV (B.C.) Ltd., and related ventures made possible through reinvestment, injected more than $75 million into the Canadian economy as, among other things, taxes, payroll, and operating expenditures and capital expenditures.

KVOS-TV (B.C.) Ltd. also contributed to the program production industry in Canada by establishing and subsidizing what was, until 1977, the largest full-line film production enterprise west of Toronto. Located in Vancouver, Canawest Film Production was unfortunately dissolved on December 31, 1977 because of the severe adverse impact of Bill C-58 on KVOS-TV (B.C.) Ltd.

From 1965 through 1975, KVOS-TV and Canawest provided employment and creative opportunities for more Canadian actors, writers, directors, producers, animators, artists and other skilled production people than any other nongovernment owned station or film production company in Canada west of Toronta. The film products from its animation facilities and its documentary studios won many major Canadian and U.S. awards. Canawest also won awards as a producer of television commercials.

The company at full capacity employed more than 100 full-time and part-time people. Operating expenses in 1976 were about $400,000; the company essentially broke even.

In 1977, Canawest was awarded a "best film produced in Canada" award for the film "Under the Polar Star." In producing this documentary for the Idaho-based Morrison-Knudson firm, Canawest brought American revenue to Vancouver, as it did in many other production jobs using Canadian talent on films which otherwise would have been made in the United States.

After we announced that regrettably the enactment of C-58 would force us to close Canawest, the Vancouver Province reported:

"With irony peculiar to Canada, the legislation that killed the company was supposed to nurture the kind of work it has been doing since 1961. * * *

"The only way for Channel 12 [KVOS] to stay competitive was to cut expenses—and rates for commercials—and Canawest was an expensive, expendable showpiece of good corporate citizenship."[1]

We do not believe that any point along the line we made a mistake in judgment. We believe in the free cross-border flow of telecommunications and have consistently supported that policy. Unfortunately, Canada's enactment of Bill C-58 undermined not only that policy, but also seriously injured the broadcasting operations of our station.

KVOS-TV has been more seriously injured by Bill C-58 than any other U.S. station, in terms of gross revenue lost. In 1975 Canadian revenues accounted for about 90 percent of total KVOS revenues. Our gross revenues declined from $7.4 million (Canadian) in 1975 to $4.1 million in 1977—a decline of about $3.1 million. Net revenues declined from $6.1 million in 1975 to just under $3.6 million in 1977. Since 1976 the Vancouver television advertising market has grown (as have most TV markets), inflation has taken place, and the value of the Canadian dollar has declined relative to the U.S. dollar. Our best estimate in round figures is that KVOS has lost, as a result of C-58, $20 million in gross revenue (Canadian) cumulatively from 1976 through 1981. This translates into nearly $16 million net loss after sales and agency commissions.

The main beneficiary of our dollar loss has been Revenue Canada, the Canadian equivalent of IRS. That's because we discount our sales to Canadian advertisers by whatever their tax rate is so that they in turn may pay those dollars directly to the government in taxes. Thus, what began in the noble name of protecting the Canadian character from being defiled by Americanization has worked out to be simply another means of producing revenue.

In order to survive, KVOS-TV has taken a number of steps to minimize the impact of Bill C-58. KVOS-TV eliminated from its nightime prime time schedule its CBS network programming, which had included CBS commercials, thereby doubling its inventory of available spots, and programmed at considerable expense as an alternative independent station. (Fortunately, CBS has been a most sympathetic associate.) KVOS-TV cut its advertising rates by 46 percent—the average tax cost of major Canadian companies—and mounted an intensive sales campaign to agencies and clients across Canada. Finally, KVOS-TV (B.C.) Ltd. phased out Canawest Film Productions in 1977.

Unfortunately, none of these figures describe adequately the tremendous impact C-58 has on the ability of KVOS to compete in the marketplace to provide quality programming to our viewers. Let me explain.

For a television station to be successful it must be able to attract audiences which advertisers want to reach. It can do this only if it can purchase programs that will be of interest to its audiences. These programs are purchased through the revenue generated from advertisers. Anything that adversely affects a station's ability to generate revenue from advertisers necessarily affects adversely its ability to attract audiences. And when a station competing against others faces limitations not faced by its competitors, it is placed at an untenable competitive disadvantage.

For example, the five stations serving the Bellingham/Vancouver/Victoria television market all compete directly for the same programming and for the same viewers. Any of these stations can buy syndicated programming only if it is the highest bidder for that programming. C-58 makes it virtually impossible for KVOS to be the high bidder since it forces KVOS to set advertising rates at about one-half those charged by its Canadian competitors, thus reducing by nearly 50 percent the amount of revenue which KVOS can generate to purchase programs.

In short, C-58 eats at the guts of a station like KVOS. Its ability over the long term to compete is further and further eroded. And the impact falls not only on the station. It falls heavily on U.S. citizens who depend on KVOS for information about their community, state and country, and are unable to obtain as much information

[1] A copy of this article is attached as Appendix A.

as they would like and otherwise would be able to receive because the resources to provide that information are simply no longer there.

For the past six years KVOS and the residents of the greater Bellingham, Washington area have been unfairly penalized and gravely injured by operation of Bill C-58. It is time that the U.S. Government took action to resolve this fundamental inequity.

Canawest going, but not forgetting

Canawest Films earned a reputation for adventurous documentaries, innovative commercials and emergency animation in the last 15 years as the KVOS-TV production company. The Time-Reader's Digest legislation left it vulnerable, and, regrettably, expendable.

A 20-minute live-animation film on containers, shot for Canadian National years ago, is still being shown to prospective customers. How to get a large elephant into a small crate was one of the sequences that helped it win an Atlanta film festival award.

Camera was strapped to a wing strut to film high-voltage transmission-line construction for government of Zaire. Documentary is in mid-production, according to a technician, "subject to the end of the revolution." Project may not be completed.

FILM

michael bennett

The credits read like an obituary for some forgotten Hollywood studio interred beneath a shopping plaza somewhere off La Cienega Boulevard: The Beatles, Abbott and Costello, and Walt Till Your Father Gets Home television cartoons, a syndicated series called The Canadians, the best English-language commercial in the country (1968), an ABC Mystery Movie, Canada's equivalent of an Oscar for a film called Way of Wood that was shot in five languages.

The mourning this time, though, isn't on the passing of Republic Pictures of another age. It's merely a dress rehearsal, because the largest commercial film producer north of Los Angeles and west of Toronto won't be clinically dead until New Year's Eve.

Canawest Films is still warm, winding down the years [illegible] and equally confounding relations with the federal government. With irony peculiar to Canada, the legislation that killed the company was supposed to nurture the kind of work it has been doing since 1961.

As a Canadian subsidiary of KVOS-TV in Bellingham, which in turn is owned by the bottlers of Coca-Cola, Canawest got caught in the hysteria of the Time-Reader's Digest debate — which somehow equated cultural sovereignty with advertising revenues — when the intent of Bill [illegible]

[illegible] becoming into Toronto from Buffalo (without as much as a Stanley corporation registered in Ontario) when the House of Commons committee decided to include border broadcasters in the statute.

When it was passed late last year, despite the reasoned amendments proposed by the Senate banking committee, KVOS income was effectively cut in half because any money spent by its Canadian advertisers would no longer be deductible as a business expense. (Most corporations operate at roughly a 50-per-cent tax level. In the old days, if a company spent $1 to advertise on KVOS, 50 cents of it would be paid for by taxes, or rather the lack of them. Now the whole dollar comes out of the client's pocket.)

The only way for Channel 12 to stay competitive was to cut expenses — and rates for commercials — and Canawest was an expensive, expendable showpiece of good corporate citizenship.

The inequities of the legislation, all too apparent to the people who drafted it, still rankle Drew Mintz, president of KVOS (B. C.) Ltd., who gets tired of defending the obvious.

"In the 10 years between 1965 and 1975, in terms of capital expenditures, payroll tax, personnel — expenditures in Canada from KVOS, the film companies and others created by the reinvestment of profits — approximately $75.5 million came back into B. C." he says.

"That compares to exactly zero for every other station serving Canada from the other side of the line."

The problem Canawest confronted for 15 years was the sort of creative parochialism associated with government and cities like Toronto: If it doesn't happen there, it doesn't happen.

"We brought $650,000 a year here from the U. S. in industrial films, documentaries and commercials, and that's all going back to Hollywood," says Mintz.

"We had work in Alberta and Saskatchewan (through Canawest-Master Films in Calgary) and those jobs will go east. What nobody in a position to do anything seemed to realize was that this was our contribution to Canadian-content production, because we couldn't make it like the other television stations."

Whether the honorable members were looking for a more patriotic affirmation of the "national fabric" or a more economic motivation, Bill C-58 became perhaps the first law in Canadian history to be proclaimed without change from its original draft.

Canawest has lost money, a lot of it, trying to provide something the country doesn't seem to want. Animation, despite the deficit financing by KVOS of several projects from Hanna-Barbera, remains an American art form. Local advertising agencies package most of the major commercials for television nowadays, and producers rent cameras, cars and sound stages rather than accumulate an inventory that would cost $750,000 to replace.

"If we were doing this in Toronto or Montreal, we wouldn't even a stitch of conference," says Mintz. "Out here, you have to, and keep people on staff if would a year."

It makes for high-priced memories — for actors waiting for an audition call from the Playhouse; props, gaffers, [illegible]

Canawest started simply enough: three guys in a cramped studio trying to put the merchandise in the best light. Before long, they were doing slide shows, film strips, and — with some help — five commercials with live performers, filming testimonials to the Alberta Wheat Pool, the Alberta centennial (featuring Burt Ives) and travelogues for Vincent Price and a show called If These Walls Could Talk.

Then there was the Canawest initiation into "the weird, wonderful world of animation" in 1965 when King Features needed The Beatles series in a hurry to go with the T-shirts, lunch buckets and wrist watches. A small group of artists and assistants did seven episodes. England and Australia got the rest.

By 1967, though, Saturday-morning television was more than the Hollywood animators could handle. Hanna-Barbera had gone to the networks in February with 11 ideas, expecting to sell four or five of them. ABC, CBS and NBC bought nine, and all of them had to be ready for the second week in September.

"They remembered The Beatles series and asked us if we could get that crew back together," says Andy Anderson, president of Canawest, "but by that time, they were scattered all over the world.

[illegible] Czechoslovakia and Spain. Good animators are a rare breed.

Anderson hired students right out of art school, housewives bored with the limitations of creative meals, anyone who could draw, paint or mix the inks. Canawest even started an animation training program with Canada Manpower, and for almost a year, classes of 20 or more painted the muscles of Samson, the waves of Moby Dick and the slapstick gestures of Abbott and Costello.

There were 150 people alone working on the Wait Till Your Father Gets Home series. The next year, nothing. The comic-strip panic was over, and by the time the Canawest comptroller figured it all out, the losses had [illegible]

Canadian television, too, was either hit, miss or [illegible]hetic, an attitude Mintz had encountered in Ottawa back in 1970 when he suggested KVOS would handroll the scripts, and even some productions, given some government encouragement. "No thanks," he was informed "we're not interested."

When Global Television was formed, though, Anderson put the hard sell on a series about the country getting to know itself, called The Canadians.

Look, he told Global, you're back in Toronto and there's this vast, enormous thing called Western Canada, particularly B. C., because you've got to get over there some tales, which form at least a psychological barrier . . .

Somebody liked the idea and Stanley Burke, the voice from the past of The National, put together a news magazine that visited a pirate on Vancouver Island, a whistle farm where the owner tests the kind of things you hear [illegible] from boots and trains, and a couple of longhairs who [illegible]. His problems of the Age of Aquarius and [illegible] to accumulate wealth.

Global collected [illegible] corporations, otherwise, and by the time Canawest got through with [illegible] it received. The Canadians ended up costing the revenue [illegible] by $125,000.

"We wanted to use Canadian talent, produce programs like it produces syndicated programs good enough at least make their money back," says Anderson. "But government steadfastly refused to be interested.

"Maybe it felt it was being bribed . . . I don't know I've given up reading people's minds."

Vancouver Province - June 30, 1977

STATEMENT OF LESLIE G. ARRIES, JR., PRESIDENT, BUFFALO BROADCASTING CO., INC.

Mr. ARRIES. I appreciate the opportunity to be here today. U.S. border broadcasters have no objections to competing with Canadian broadcasters—as long as the terms are the same. We would much prefer an open transborder market to protectionist barriers. But if Canada wants the benefits of the services our stations provide, it must allow us a reasonable opportunity to obtain compensation.

We appreciate the deep concerns about national identity and cultural sovereignty that underlie Canadian policies such as Bill C-58. But such concerns do not justify a policy so plainly unfair, one-sided, and unjust.

The U.S. border broadcasters have proposed a compromise solution to this dispute. In return for an exemption from C-58, each participating broadcast station would contribute to a Canadian production fund a percentage of its annual revenues, after agency fees, from advertising directed primarily toward Canadian audiences and placed by Canadian companies. While we would prefer a totally unencumbered open market for the sale of broadcast advertising, we suggested the production fund as a realistic compromise.

I suggested the production fund compromise at a meeting in Toronto on April 21, 1980, with a group of Canadian broadcasters from the Canadian Association of Broadcasters. At that time, I was a member of the National Association of Broadcasters' board of directors.

The Canadians flatly rejected the proposal and labeled it "insulting."

I came home from Toronto convinced that it is impossible to resolve the border broadcast issue solely within the private sector—with Canadian broadcasters—nor does it appear possible to offer jointly suggested solutions to our governments. It is my belief the Canadian Government thinks the border broadcasters will not get the needed support from our Government or from our Congress, and, therefore, they will not take any action on this issue.

Unfortunately, this conclusion was confirmed by a subsequent meeting last fall between the NAB and our Canadian counterparts in a trip I made to Ottawa. Even after the NAB warned that President Reagan intended to reiterate President Carter's finding in the section 301 case and suggested tougher action might be necessary, the Canadian broadcasters remained steadfastly intransigent.

Only tough legislation—stronger than the present mirror bill—will finally convince the Canadians that they cannot stonewall our Government forever. We have been reasonable; we have been patient; now it is time for our Congress to act.

I personally have been trying to solve this problem for over 10 years. I have been in Buffalo for over 15. Most of that period, I have spent about a third of my time appearing before the Houses of Parliament in Ottawa, before government officials in Canada, both in Toronto and Ottawa, talking to the cable operators of Canada, and the Canadian broadcasters—without success.

Our goal never has been to win the border broadcast war. All we ask of Canada, all we ask of Congress, is for an equitable bilateral

resolution. We need your support to restore free trade in telecommunications services.

[The prepared statement follows:]

STATEMENT OF LESLIE G. ARRIES, JR., PRESIDENT, BUFFALO BROADCASTING CO., INC.

SUMMARY

U.S. border broadcasters have no objections to competing with Canadian broadcasters—as long as the terms are the same. We would much prefer an open transborder market to protectionist barriers. But if Canada wants the benefits of the services our stations provide, it must allow us a reasonable opportunity to obtain compensation.

We appreciate the deep concerns about national identity and cultural sovereignty that underlying Canadian policies such as Bill C-58. But such concerns do not justify a policy so plainly unfair and one-sided.

The U.S. border broadcasters have proposed a compromise solution to this dispute. In return for an exemption from C-58, each participating broadcast station would contribute to a Canadian production fund a percentage of its annual revenues, after agency fees, from advertising directed primarily towards Canadian audiences and placed by Canadian companies. While we would prefer a totally unincumbered open market for the sale of broadcast advertising, we suggested the production fund as a realistic compromise.

I suggested the production fund compromise at a meeting in Toronto on April 21, 1980, with a group of Canadian broadcasters from the Canadian Association of Broadcasters. The Canadians flatly rejected the proposal and labeled it "insulting."

I came home from Toronto convinced that it is impossible to resolve the border broadcast issue solely within the private sector—with Canadian broadcasters—nor does it appear possible to offer jointly suggested solutions to our governments.

Unfortunately this conclusion has been confirmed by a subsequent meeting last fall between the NAB and our Canadian counterparts. Even after the NAB warned that President Reagan intended to reiterate President Carter's finding in the Section 301 case and suggested tougher action might be necessary, the Canadian broadcasters remain steadfastly intransigent.

Only tough legislation—stronger than the present mirror bill—will finally convince the Canadians that they cannot stonewall our government forever. We have been reasonable; we have been patient; now it is time for our Congress to act.

Our goal never has been to win the border broadcast war. All we ask of Canada, all we ask of Congress, is for an equitable bilateral resolution. We need your support to restore free trade in telecommunications services.

STATEMENT

Mr. Chairman, thank you for the opportunity to explain to this committee the need for tough legislation t respond to an unreasonable and discriminatory Canadian trade practice. Nothing less will end the border broadcast war. Nothing less will force the Canadians to budge from their total unwillingness to negotiate or even to consider reasonable compromise proposals.

This is not the first time I've addressed this problem in Washington. Twice I appeared as a witness before the Section 301 Committee investigating the complaint that fifteen U.S. border stations, including my station (WIVB-TV, owned by Buffalo Broadcasting Co., Inc.), filed against Canada. On November 29, 1978 I appeared as a witness for two groups, the National Association of Broadcasters (NAB) and the fifteen Section 301 complaint signatories. The NAB, which oppposed Bill C-58 even before it was enacted into law by the Canadian Parliament, had authorized me to express its sense that Bill C-58 was an inequitable, unreasonable and discriminatory measure. I stated in part:

"As a general principle, we believe that the policy behind Section 3 of Bill C-58 is unreasonable because it does not permit U.S. television stations to obtain compensation for the services they provide to Canada. These services include entertainment and information to Canadian viewers, additional commercial availabilities to Canadian advertisers to sell their goods and services, and a programming service to Canadian cable systems. By making it prohibitively expensive for Canadians to advertise on U.S. stations, Canada has severely limited the opportunity of our border stations to compete in an open marketplace and in effect permits piracy of U.S. programming." * * *

"The NAB believes that protectionist barriers will stifle creativity in the long run, and the freedom to see or hear a wide variety of programming is in the best interests of the citizens of both countries. Programs and advertising should be sold without restraints in either country on the basis of open market competitive conditions. An open border for the interchange of television programs and programming service, and for the free flow of advertising revenues according to the needs of both countries' advertisers would do more to strengthen the Canadian and American broadcasting industries than protectionist barriers."

As a witness for the signatories I noted that Bill C-58 wasnot the first unilateral measure of the Canadian Government intended to limit Canadian advertising on U.S. television stations. Eleven years ago, in 1971, the Canadian Radio and Television Commission (CRTC) issued a document entitled "Canadian Broadcasting—A Single System" which was the genesis of several policies designed to retain U.S. programming for Canadian consumers while discouraging Canadian businesses from advertising on U.S. border stations.

Among the pololicies recommended was the practice of commercial deletion, deleting the commercials of the U.S. stations on Canadian cable systems and substitution of public service announcements or "other suitable material." The CRTC initially encouraged the implementation of commercial deletion in 1972 on a voluntary basis. Experience showed this to be ineffective. Thereafter, willingness to encourage the practice of commercial deletion was made a condition of license for a number of cable systems. Only after sharp protests from the Canadian Cable Association, from the Canadian press (which used the word "piracy" to express their views as to the unfairness of the practice) and from Canadian citizens writing letters to the newspapers as well as opposition from our government did the Canadian government defer implementation of commercial deletion.

But even as Canada was about to moderate its policy on commercial deletion, it enacted BILL C-58. This unilateral imposition of an unfair trade barier is particularly offensive because it impedes the free flow of information between two of the most open democracies in the world.

We have no objections to competing with Canadian broadcasters—as long as the terms are the same. We would much prefer an open trans-border market to protectionist barriers. But if Canada wants the benefits of the services our stations provide, it must allow us a reasonable opportunity to obtain compensation.

Border broadcast stations do not receive any copyright monies from the Canadian government for programs broadcast and used in Canada, nor do we receive any money from Canadian cable systems which use our signals to obtain subscribers.

We appreciate the deep concerns about national identity and cultural sovereignty that underline Canadian policies which are used to explain activities such as Bill C-58. But such concerns do not justify a policy so plainly unfair and one-sided.

Moreover, the achievement of a cultural identity is not solely an issue of domestic Canadian import. Canada's cultural policy, according to its present Ambassador to the U.S., is also a "fundamental and inseparable aspect of Canadian foreign policy" which "[pays] demonstrable dividends in commercial terms.[1] So long as the maintenance of a "healthy cultural reputation" is evaluated by Canadian policy-makers in commercial terms,[2] U.S. policy-makers should not be reluctant to enforce U.S. objectives with commercial and trade remedies.

In recognition of the legitimate Canadian concern with the limited effects of U.S. border competition on the Canadian broadcasting system, the U.S. broadcasters proposed a compromise resolution to this dispute. In return for exemption from C-58, each participating broadcast station would contribute to a Canadian production fund a percentage of its annual revenues, after agency fees, from advertising directed primarily towards Canadian audiences and placed by Canadian companies.

Each qualified "undertaking" selling time in Canada would agree in advance to make such payments and would certify its qualifications to advertiser. Payments to the fund would be credited against any Canadian or U.S. Tax liability associated with the broadcasting activity for a qualified "undertaking."

A Canadian Board of Directors would control and administer the fund. The Board's constitution and responsibilities would be established in consultation with the Canadian government.

The purpose of the fund would be to strengthen the Canadian broadcasting system—whether by extension of service, stimulation of Canadian program produc-

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[1] Department of External Affairs, Statements and Speeches, No. 79/20; "Cultural Diplomacy: A Question of Self-Interest" (an address by Allan Gotleib, Under-Secretary of State for External Affairs, to the Association of Universities and Colleges of Canada, Winnipeg, Nov. 12, 1979), 9.

[2] Id.

tion or otherwise—and to strengthen other Canadian creative and cultural resources relevant to broadcasting.

While we would prefer a totally unencumbered open market for the sale of broadcasting advertising, we suggested the production fund as a realistic compromise. We presented it as a conceptual approach within which we would be willing to negotiate particualr aspects.

As chairman of a delegation of U.S. broadcasters representing the National Association of Broadcasters, I suggested the production fund compromise at a meeting in Toronto on April 21, 1980, with a group of Canadian broadcasters from the Canadian Association of Broadcasters. The Canadians flatly rejected the proposeal and labeled it "insulting."

I came home from the Toronto meeting convinced that it is impossible to resolve the border broadcast issue solely within the private sector—with Canadian broadcasters or cable system operators—nor does it appear possible to offer jointly suggested solutions to our governments. Unfortunately, this conclusion has been confirmed at a subsequent meeting last fall between the NAB and our Canadian counterparts. Even after the NAB warned that President Reagan intended to reiterate President Carter's finding in the Section 301 case and suggest that tougher action might be necessary, the Canadian broadcasters remained steadfastly intransigent.

Similarly, most members of Canadian delegations to Interparliamentary Group Meetings with our Congress have refused to face the issue on any reasonable terms. We deeply appreciate the repeated efforts of our delegations to engage the Canadians in meaningful dialogue on Bill C-58 and other cross-border communications issues Earlier this year I received a letter from Congressman Frank Horton, who had attended the most recent Interparliamentary meeting with Canada in March. After noting that the American delegation raised the border broadcast war issue, Congressman Horton stated, "It was the consensus of the American delegation that the Canadians continue to resist a reasonable solution to the problem." Congressman Horton, a co-sponsor of H.R. 5205, pledged his support to win House passage of "this important legislation."

Mr. Chairman, this is very important legislation. The Congress and the Administration, acting in response to our Section 301 complaint, can succeed on a government to government basis where we failed on an industry to industry basis. Only tough legislation—stronger than the present mirror bill—will finally convince the Canadians that they cannot stonewell our government forever. We have been reasonable; we have been patient; now it is time for our Congress to act.

Our goal never has been to win the border broadcast war. All we ask of Congress, all we ask of Canada, is an equitable bilateral resolution. We need your support to restore free trade in telecommunications services.

Chairman GIBBONS. Glad to have you here.

STATEMENT OF SHELDON S. COHEN, COUNSEL, WOMETCO ENTERPRISES, INC.

Mr. COHEN. Mr. Chairman, Mr. Frenzel, I have been assisting the border broadcasters since shortly after the enactment of C-58. We have attempted in every way to follow the established procedures.

We believe it is in the best interests of the U.S. Government and of industry to use the established 301 procedures to resolve the problem, and we have been trying to help make it work. We worked diligently with the Congress, the USTR Office, the State Department, the Treasury Department, in the long period before we ever filed the section 301 complaint in order to resolve the problem.

However, as has been stated before, we were unable to get the Canadians to even discuss the matter seriously with us. It was only after it was clear that no private initiative could move the Canadians that we seriously began the 301 procedure. Now we have had two Presidents, two USTR's, make recommendations. We strongly support H.R. 5205.

We believe it is the only way that we can get the Canadians to discuss and negotiate this in a realistic manner. I think, as has

been stated before, the procedure under 301 which was initiated by the Congress, by this committee, and by comparable committees on the Senate side, is at stake here.

Here we have the first group of companies to go through the procedure, to have the President make the recommendation. If the Congress fails to follow up on a procedure that it has established, then indeed we have a cannon with a little cap gun behind it making a bang, and no one will pay any attention to us in the future.

Another point I would like to make is that we initially opposed, as you might remember, Mr. Chairman, the Canadian convention tax exemption to get the Canadians' attention. When the bill went through and allowed the Canadians to have the same benefits of American conventions as American cities have, Mr. Conable commented this was a good will gesture on the part of the Congress toward the Canadians.

He hoped that they would respond with some of the same good will.

Well, the Canadians' response has been absolute silence. They have taken the largesse of our Congress in saying you are our friends; you are our neighbors; we ought to treat you in a special way; and they have taken that and said well, if you are willing to give it, we are willing to take it, but we have nothing to offer in return.

That is not what good neighborliness is supposed to be about.

I think it is time we took some action.

[The prepared statement follows:]

STATEMENT OF SHELDON COHEN

SUMMARY

Prior to filing a complaint pursuant to Section 301 of the Trade Act of 1974, the border broadcast stations worked diligently with this Committee, other Members of Congress, and the Executive Branch to try to reach a negotiated settlement. Only after it became obvious that the Canadians were entrenched in their position did we turn to the 301 process.

As a result of our efforts, President Carter found that Canadian tax law constituted an unfair trade practice and burdened and restricted U.S. commerce in violation of Section 301. Two years after we filed our initial compliant, he recommended in a message to Congress enactment of mirror legislation. It was too late in the 96th Congress for any action on that proposal.

With the change in Administrations, the process resumed soon after Ambassador Brock took office. While President Reagan reiterated the need for legislation, his message warned Canada that further action would be taken if necessary to remedy the violation of Section 301.

The successful resolution of this 301 case rests in your hands. As we approach the fourth anniversary of the filing of the Section 301 complaint, our stations still face the equivalent of a nearly 100 percent tariff on the sale of advertising to Canadian businesses. Thus far it has been an expensive, lengthy and fruitless effort.

I want to emphasize that the purpose of S. 2051 is neither to punish the Canadians nor to recompense the injured U.S. broadcasters. An expanded mirror bill's sole purpose is to obtain negotiating leverage to encourage Canada to open its broadcast advertising market to U.S. border stations on an equitable basis. Such legislation would be effective only as long as the offending Canadian law remains in effect.

We believe that this Committee can use the proposed legislation to aid in remedying our long-standing complaint. After relying for so long, at so high a cost on the 301 process—established in large part by this Committee—we believe you will feel an obligation to make the process work. We believe the merits of our case—as stated by President Carter and confirmed by President Reagan—should make the decision of each member to support effective legislation relatively easy.

STATEMENT

Mr. Chairman, I am Sheldon S. Cohen of the law firm of Cohen and Uretz in Washington, D.C. I am appearing on behalf of Wometco Enterprises, Inc., parent company of KVOS Television, licensee of KVOS-TV, Bellingham, Washington, and on behalf of a number of other border broadcasters.

As you know, I am a tax lawyer and do not deal in international trade work except as to its tax aspects. On several occasions I have testified about the border broadcast dispute before committees of the Senate and the House and before the Section 301 Committee.

The border broadcast Section 301 case concerns the use of the Canadian tax code to impse a "non-tariff" trade barrier. It might be helpful, therefore, to discuss the steps our clients have taken to use the Section 301 process to seek fair access for their services to a foreign market.

Even before our clients filed a Section 301 complaint on August 28, 1978, we worked diligently with this Committee, other members of Congress, and the Executive Branch to reach a negotiated settlement. When it became obvious that the Canadians were entrenched in their "no negotiation" position, we turned to the 301 process. To bring our case through that process, we have filed five major legal documents with the Section 301 Committee, and participated in two full scale public hearings before the Section 301 Committee, and held countless informal meetings with executive branch officials. During this entire process, Canadian representatives participated. Appended to this statement is a chronology of events in our 301 case.

On July 31, 1980, President Carter found that the Canadian tax law constituted an unfair trade practice and burdened and restricted U.S. commerce in violation of Section 301. In a message to Congress on September 9, 1980, the President recommended enactment of mirror legislation. This recommendation occurred two years after we had first filed the complaint. It was too late in the 96th Congress for any action on that legislative recommendation.

With the change in Administrations, the process resumed soon after Ambassador Brock took office. It was necessary for a whole new team of trade officials to review the case and formulate its response. President Reagan recommended action on November 17, 1981. While President Reagan reiterated the need for legislation, his message warned Canada that further action would be taken if necessary to remedy the violation of Section 301.

President Reagan's stronger message reflected the lack of movement by the Canadian government in response to President Carter's proposed mirror legislative recommendation. The current Administration recognizes that the Canadian intransigence on this issue will not change unless we can exert more leverage on this issue. The President has asked Congress to provide that extra leverage. The successful resolution of this 301 case rests in your hands. And I might say this 301 case is one of the first involving the export of services, an area of growing concern to American business people and the Administration.

As we approach the forth anniversary of the filing of the Section 301 compliant, our stations still face the effect of a nearly 100 percent tariff on the sale of advertising to Canadian businesses. So, where has the Section 301 process taken us?

It has confirmed that Bill C-58 violates Section 301;

Two Presidents have proposed mirror legislation;

Bi-partisan groups of prominent Senators and Representatives have sponsored mirror bills;

This Committee is holding a hearing.

That is where four years of pursuint a Section 301 complaint has taken us.

You have heard from Mr. Hollands and Mr. Arries about the harm to their stations and the recalcitrance of the Canadians. Clearly, these U.S. broadcasters have shown remarkable patience and perseverance with the 301 process.

Thus far it has been an expensive, lengthy and fruitless effort. But we believe that this Committee, if it so chooses, can work with the President and Ambassador Brock to vindicate our decision to rely on Section 301.

The Canadians, themselves, have recognized Section 301 as a potentially significant trade tool. One of the Canadian parties participating in the border broadcast Section 301 case stated:

"Section 301 is a dramatic, powerful yet measured weapon given to the President with respect to trade practices of foreign governments. It is viewed from outside the United States with great interest, by all America's major trading partners." [1]

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[1] Statement of Counsel for Rogers Telecommunications Ltd., Response to Supplemental Submission, July 9, 1980, at 11.

Our goal now, as it has always been, is not to win a battle; it is only to restore the various stations' ability to compete in the Canadian markets on an equitable basis.

I want to emphasize that the purpose of H.R. 5205 is neither to punish the Canadians nor to recompense the injured U.S. broadcasters. An expanded mirror bill's sole purpose is to obtain negotiating leverage to encourage Canada to open its broadcast advertising market to U.S. border stations on an equitable basis. Such legislation would be effective only as long as the offending Canadian law remains in effect.

We believe that this Committee can use the proposed legislation to aid in remedying our long-standing complaint. After relying for so long, at so high a cost on the 301 process—established, in large part by this committee—we hope you will agree with the administration and our clients that this is an opportunity to make the process work. We believe that the merits of our case—as stated by President Carter and confirmed by President Reagan—should make the decision of each member to support effective legislation relatively easy.

APPENDIX TO STATEMENT OF SHELDON S. COHEN

(Section 301 complaint chronology of events)

August 29, 1978: Fifteen U.S. border broadcast stations file a formal complaint under Section 301 of the Trade Act of 1974 with the Special Trade Representative alleging trade discrimination by Canada in C-58.

November 22, 1978: Broadcasters file 77-page brief with 81-pages of appendices.

November 29, 1978: STR hearings on the complaint. Canadian broadcasters appear in opposition to the complaint.

January 1, 1979: Broadcasters file 84-page reply brief with 45 pages of appendices.

1979: Congress amends Section 301 to clarify its scope. Language was included specifically to answer Canadian arguments that Section 301 Trade Act relief did not extend to broadcast advertising services.

February, 1980: USTR tells Canadian Government a final resolution to the complaint must be reached before the statutory deadline of July, 1980.

July 9, 1980: USTR on possible remedies. Senators Moynihan and Heinz submit testimony on behalf of the broadcasters. Broadcasters file 50-page supplemental submission before the hearing and a 32-page rebuttal brief in response to issues raised at the hearing.

July 31, 1980: President Carter determined that Canada had acted unreasonably and recommended mirror image legislation.

September 9, 1980: President Carter sent a message to Congress, calling for the enactment of mirror image legislation. The 96th Congress did not have time to consider the proposal.

November 17, 1981: President Reagan signed a message to Congress, calling for early passage of mirror image legislation.

December 14, 1982: Rep. Conable introduces mirror legislation, H.R. 5205. Reps. Jones, Vander Jagt, Frenzel, Kemp, LaFalce, Nowak, Swift, Marks, Martin, Oberstar, Fascell, Horton, co-sponsor.

February 2, 1982: Senator Danforth introduces identical bill, S. 2051. Sens. Moynihan, Bentsen, Heinz, Wallop, Symms, Mitchell, Gorton, Jackson, Cohen, Pressler, co-sponsor.

May 14, 1982: Hearing before the Senate Finance Committee Subcommittee on International Trade.

Chairman GIBBONS. Are the Canadian stations still pirating your signal?

Mr. ARRIES. The Canadian television stations and networks purchase American programs for use on their stations and networks. The Canadian cable systems pickup our signals, and our program presentations as the bait with which they have built and developed a far stronger cable industry than we have in this country or anywhere else in the free world.

They have major markets such as Toronto and Vancouver, which are as much as 85 percent wired, using the United States border stations programs to attract those subscribers.

At one point, Canadian cable systems were deleting the commercials in our programs and inserting their own announcements. This

practice was stopped substantially although it still is on the back burner. It still takes place in the Canadian west in the Calgary area. It now does not happen either in Toronto or Vancouver.

Chairman GIBBONS. I am in deep sympathy with the problem you have. I think we ought to get this bill through.

Mr. Frenzel?

Mr. FRENZEL. Thank you, Mr. Chairman.

As I indicated, when you were patiently waiting through thousands of other witnesses, I have a real problem with the mirror bill. It is that it is not going to do anything, it is not going to encourage the Canadians to negotiate. I guess I would much rather do something I would think might hurt them like go back to the conventional tactic. It seems to me that the mirror bill is most likely to hurt American advertisers. I am sure that that is not the first time you have heard that line of reasoning.

I am sure there must be a response. I would like to hear it from such as you who would like to do so.

Mr. COHEN. We suggested a number of alternatives when we were before the USTR. This alternative, the mirror alternative, was the least onerous on the Canadians. It is conjecture on my part, but I think it is pretty good conjecture, that the staff of the USTR said "Let's start with the mildest rapprochement, punishment, if you will, and we can always go to something more serious."

There are other techniques, perhaps one of my colleagues might like to discuss some of the technological developments in the communications area, because, under 301, we believe that if we are going to go beyond mirror the appropriate remedy ought to be in the same area of technology.

Mr. FRENZEL. I guess I agree with you, but my question is if you pass the mirror law, then American companies who want to sell products to 20 million persons in the Canadian market will have one way of improving these sales denied to them. It seems to me whatever good it does you, it is going to do a lot of American companies some harm. Should that not concern us?

Mr. HOLLANDS. The bill is designed to, should it be enacted, affect only those U.S. advertisers who are using Canadian stations to reach U.S. citizens. That is a reciprocal of what the Canadian law is. There are plenty of U.S. stations, for example, in Detroit, which a U.S. advertiser may use instead of the Windsor, Canada station, which is a common vehicle for U.S. advertisers to reach Detroit citizens. So U.S. advertisers would still be able to reach their intended audience.

The mirror legislation would have no effect on U.S. business advertising in, let us say, Toronto, Calgary, or Victoria, to reach Canadian advertisers. It is only designed to prevent or present a hindrance to advertising directly on Canadian outlets toward U.S. audiences.

Mr. FRENZEL. Well——

Mr. ARRIES. I would like to add that Canada's bill C–58 affects many border broadcasters on this side of the border. Twenty-one television stations have signed the statement we have submitted today, but there are more who are affected. The mirror legislation we would hope to get passed here really only affects one major sta-

tion. That is at Windsor, Canada, radio station, CKLW, owned by John Basset. It just happens to be poetic justice that it affects his radio station, because he is one of the gentlemen that started C-58 and supported its adoption. He also owns CFTO-TV, channel 9 in Toronto, which is probably the most profitable and popular television station in Canada, due in large measure to the effect of C-58.

So the fact that his radio station may get hurt, and that is really the only station that this legislation would affect, seems only just. I agree with you that discussions with Canadians have made it pretty clear that the mirror legislation before this committee will not alone cause the Canadian Government to come to the bargaining table. We must strengthen it.

The Moynihan amendment does that. We think that the amendment properly belongs in the U.S. legislation whose passage we now seek.

Mr. FRENZEL. Why don't you explain the Moynihan amendment to me?

Mr. ARRIES. The Moynihan amendment relates to Telidon. We believe that the Canadian videotex technology, Telidon, is a way——

Mr. FRENZEL. What do you do; ban the use of Telidon in the United States?

Mr. ARRIES. No, we wouldn't ban the use of it. We would treat its use here in the same way advertising expenditures are treated in Canada.

Mr. COHEN. Let me add, the technical way it would be done, Mr. Frenzel, would be for the Telidon technology, which is basically a communications technology, to be nondeductible if used in the United States. That would not harm any American enterprises.

No one is using it now. There are a few people who were experimenting with that as well as other technology. It is not being used commercially yet. There are at least two or three other competing technologies available. So that if you were to draft such legislation, American enterprise, industry, would not be deprived of a particular technology because there is equally good competing technology available.

Mr. FRENZEL. It seems to me that that would improve the clout of the mirror bill. I guess I will have to take another look at it. I still don't see how you sort out the markets between Canada and the United States, and allocate what is deductible and what isn't.

Mr. COHEN. That is a problem. That is a problem the Canadians have right now with their own legislation. That is, when is an ad aimed at bringing Americans in and when is it aimed at bringing Canadians in. It is the same exact problem on both sides. It is not easy either way. The Telidon technology is probably easier to define.

Mr. FRENZEL. Well, thank you very much. I appreciate it.

Chairman GIBBONS. Thank you, gentlemen.

This concludes the Trade Subcommittee's hearings on reciprocal trade and market access legislation. The hearing record will remain open until the close of business, Monday, August 2, for the receipt of additional statements and information.

The meeting is adjourned.

[Whereupon, at 6:06 p.m., the subcommittee was adjourned.]

[The following was submitted for the record:]

JAMES R. JONES
First District, Oklahoma

Chairman
COMMITTEE ON THE BUDGET
Member
COMMITTEE ON WAYS AND MEANS
Trade Subcommittee
DEMOCRATIC STEERING AND POLICY COMMITTEE
Chairman
DEMOCRATIC RESEARCH ORGANIZATION

WASHINGTON OFFICE:
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4536 Federal Building
Tulsa, Oklahoma 74103
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Congress of the United States
House of Representatives
Washington, D.C. 20515

26 July 1982

Honorable Sam Gibbons
Chairman
Ways and Means Trade Subcommittee
233 Cannon House Office Building

Dear Mr. Chairman:

I am writing to thank you for holding a hearing on the issue of reciprocal market access, and for taking up H.R. 5596, the market access bill I have worked on with Bill Frenzel. I apologize for not being able to attend this important hearing, but a commitment I made to one of our colleagues several months ago requires me to be out of town today.

As you know, I have a strong commitment to free trade, but I also believe that trade must be fair. Clearly, the U.S. currently provides more open access to its markets than many of our trading partners. If we are to convince the American people to resist the rising tide of protectionism that has been spurred by domestic and international economic problems, we must find an effective way to enforce U.S. rights to market access abroad.

H.R. 5596 attempts to address this problem by making it a violation of Section 301 of the Trade Act of 1974 to deny U.S. exports "substantially equivalent commercial opportunities." While I understand the concerns which have been raised about this language, I also believe that we cannot afford to adopt language which could be perceived by the American public as ineffective. I hope that those witnesses who express concerns about SECO will be able to offer positive suggestions for alternatives that will address their concerns while providing a real alternative to domestic content requirements or tariff barriers.

I very much appreciate your taking the time to address this important issue, and I look forward to reading the testimony of our fine witnesses.

With best wishes,

Sincerely yours,

JAMES R. JONES
Member of Congress

TESTIMONY OF CONGRESSMAN JIM DUNN
BEFORE THE SUBCOMMITTEE ON TRADE
OF THE WAYS AND MEANS COMMITTEE
JULY 26, 1982

Mr. Chairman, members of the committee, I appreciate the opportunity you have given me to submit testimony on the reciprocity issue. I am growing increasingly concerned over this nation's mounting trade deficit with Japan, largely a result of Japan's non-tariff barriers designed to keep foreign goods out. These unfair trade practices are especially harmful to the U.S. auto industry, which is of vital importance to our nation's economic health.

To illustrate, in 1980 the domestic auto output based on value added equaled $48.6 billion, which was 1.85 percent of our GNP. Nearly 5 million people are employed directly or indirectly in producing, selling and servicing cars. Thus the severe sales slumps of 1980, 1981 and this year have taken a terrible toll on a great number of American workers and their families.

With this in mind, I believe it is necessary to remedy the imbalance between our treatment of foreign car imports and that of the Japanese. Many trade officials would agree that the U.S. represents one of the most open markets in the world today. However, a free trade policy by its very nature must be mutual. Anti-competitive regulations and non-tariff fees work against this. As a result, the United States has little choice but to enforce an element of fairness in trade by a policy of reciprocity.

Japan's U.S. imports face several forms of non-tariff barriers, which keep American products out of the Japaneses market without technically violating international trade agreements. One example is the 15% commodity tax which hits American cars harder than Japanese cars. The Japanese car is taxed after the added costs of ocean freight, insurance, port handling, and make-ready costs are added on. Meanwhile, the U.S. bases duty rates on F.A.S. or F.O.B. value off the ship.

There is also a bias in commodity and "road" taxes against the larger

engine cars. For example, the road tax for cars with an engine size of 2001cc is 270% higher than on a car of 2000cc or less.

It is estimated that the commodity tax alone can add $1000 to the price of a U.S.-built car sold in Japan.

Compliance with Japanese safety and pollution standards adds even more to the sticker price. Not only do Japanese engineers witness testing of U.S. vehicles designed for the Japanese market, but even after certification and sale each individual imported automobile must still undergo another battery of examinations at local registration offices. This procedure normally takes a full day and averages about $200 per car. On their own vehicles, the Japanese simply do spot tests and random checks. In the U.S., blanket permission is granted for importing entire lines of foreign-made cars.

Another problem is that many minor cosmetic changes are required of U.S.-built automobiles before the Japanese allow their sale. With the small percentage of U.S. cars sold there, it is very uneconomical for U.S. manufacturers to make these alterations.

Finally, Japanese custom forbids auto dealers from sharing facilities with the importers. It was just this sort of "piggybacking" that allowed the Japanese to move effectively into the American auto market.

How does all this add up? The December 1, 1980 issue of Business Week printed that a Ford Escort, costing about $7400 at that time in the U.S., cost about $11,700 in Japan -- a markup of about 58%.

Such price escalations caused by non-tariff trade barriers have had a telling impact on sales of U.S.-made cars in Japan. In 1979, about 13,000 U.S. cars were sold in Japan; the figure fell to 9,305 the following year, and for the first seven months of 1981, export shipments of cars from the U.S. and Canada to Japan equaled 2,710 units.

Meanwhile, in 1981 there were 1.86 million Japanese-made cars sold in

the U.S., up 111 percent from 1975. At present, more than one of every five cars sold in the U.S. is Japanese made (21.8% in 1981).

This disparity clearly puts our auto and auto-related industries in a critical position. Japanese refusal to engage in mutual free trade necessitates establishing a system of trade reciprocity. In response to this, last November 19 Congressman Duncan Hunter and I introduced H.R. 5050, the "Two-Way Street" Act which, as you know Mr. Chairman, has been referred to your subcommittee for action.

This legislation would equalize trade practices with Japan in respect to auto imports. The bill simply calls for the establishment of a commission which would review Japanese and American trade practices, and impose parity fees to equalize the effects on pricing resulting from the separate standards. If the Japanese continue to put restrictive standards on our cars, we should do the same for their cars coming to the U.S.

The bill also provides an exemption allowing the importation of one automobile from Japan, without a parity fee, for each automobile manufactured by that company in the U.S. This encourages the building of Japanese cars here in the U.S., using U.S. labor. In addition, the "Two-Way Street" Act could serve as a means within the GATT framework to remedy the ongoing Japanese trade violations.

Willingness to take reciprocal action to enforce fairness in trade would ensure that American manufacturers are able to compete on an equal basis with foreign competitors. It will provide a solid platform from which we can negotiate away trade barriers and remedy the imbalance of trade and tactics between our markets and those abroad. Most important of all, this willingness would also help our country toward economic recovery.

Mr. Chairman, again, thank you for the opportunity you have given me to to offer this statement to your committee.

OLYMPIA J. SNOWE
2nd District, Maine

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August 2, 1982

The Honorable Sam M. Gibbons
Chairman, Subcommittee on Trade
1102 Longworth HOB

Dear Sam:

I greatly appreciate the opportunity to submit written testimony to the House Ways and Means Subcommittee on Trade regarding reciprocal trade legislation. This is an issue of vital importance to the health of many businesses in Maine as well as across this country.

At the hearing, several industry leaders and representatives of business organizations outlined several cases where our trading partners have denied market access for many of our American goods and services. In my testimony, I outlined the trade problems confronting three key industries in Maine, the fishing, lumber and potato industries. The inability to export into foreign markets, denies these industries the opportunity to expand their production capacities. Job opportunities, as well, are lost for many Maine citizens.

I commend the efforts taken by the Subcommittee members, therefore, to address this inequitable situation and develop legislation which will allow the President to respond to unfair trade practicies in a more flexible and efficient manner.

Thank you again for allowing me the opportunity to have my written statement printed in the committee record.

Best wishes.

Sincerely,

Olympia

OLYMPIA J. SNOWE
Member of Congress
2nd District, Maine

Mr. Chairman, thank you for the opportunity to provide testimony before the House Ways and Means Subcommittee on Trade regarding equitable market opportunities for U.S. industries, and ways to strengthen existing trade legislation.

I would like to specifically address my concerns to three key industries in Maine, the fishing, potato, and lumber industries that have suffered enormous economic hardship as a result of the unfair and disruptive trade policies practiced by the Canadian government.

It is no secret that the Canadian government subsidizes its agriculture, fishing, and forestry sectors heavily through grants, interest subsidies, loan guarantees and tax incentives. The presence of these subsidy programs has created an unbalanced situation, virtually squeezing U.S. potato, fishing, and lumber products out of the export market.

For example, imports of potatoes from the maritime provinces have tripled since 1975. In fact, more than 70 percent of all potatoes imported to the United States come from the maritime provinces in Maine's backyard. Industry leaders in Maine estimate that the state's growers may lose as much as $60 million this year, due to the increase of Canadian exports to the United States. In recent years, Maine's potato acreage has been reduced by some 30-40 percent and the number of growers has dropped from 4,500 to 1,000.

Similarly, the subsidized Canadian timber industry adversely affects the prosperity of its U.S. counterpart. Imports of subsidized lumber have increased dramatically, taking 31 percent of the

U.S. market. While Canadian forest products firms have been profitting, U.S. logging and sawmill workers have been losing their jobs at unprecedented rates. Currently, overall U.S. unemployment in the timber industry hovers at 20 percent and in some regions in Maine the level is a staggering 50 percent!

Another Maine concern that Canadian fishing subsidies have placed the U.S. fishermen at a distince disadvantage when compared with their Canadian counterparts. According to the National Marine Fisheries Service, imports of fish from Canada to the United States has increased approximately 20 percent since 1976. Armed with price supports and tax breaks, the Canadian fisherman has marched into U.S. markets and severely undercut the New England fisherman's market price. This situation is patently unfair and it is clear that the aggressive trade policies practiced by Canada have worked to the detriment of these three key industries in Maine.

As we all know, to address the problem of unfair trade practices, the [illegible] of the world have developed multilateral trade agreements kno[illegible]. But the dispute settlement process in GATT is long an[illegible]ed[illegible]d the needs of the small businessman are immediate. Thus, I [illegible] encouraged with the efforts of my colleagues on this commi[illegible]t the problems with our existing trade laws. I belie[illegible] proposed Reiprocal Trade and Investment Act of 1982, introduced by Mr. Frenzel will go far towards strengthening the retalitory provisions in Section 301 of the Trade Act of 1974, thus ensuring reciprocity of market access.

Specifically, the amendments made in Section 301 to define the terms, "unjustifiable, unreasonable, and discriminatory," will clarify this section's applicability and will allow for its more effective use by the Administration. In addition, Section 302 as amended with the self-initiation provisions, will provide the United States Trade Representative clear authority to investigate unfair trade practices. I believe the development of this new domestic procedure will greatly facilitate future settlement disputes between the United States and our trading partners.

Although I believe the amendments mentioned above in H.R. 6773 will allow the President to exercise his authority more effectively when addressing inequities in market access, I do not believe this bill provides an adequate means for dealing with another major trade problem - that of foreign subsidy programs which have facilitated exports into our domestic markets, causing serious economic implications for many small industries whose markets are most vulnerable.

The existing laws governing unfair trade practices such as anti-dumping and countervailing duties, that were designed to eliminate unfair trade barriers fall short of meeting the needs of small business. Due to the enormous expense and complexity of filing these trade petitions, small industries with limited resources do not have an adequate mechanism to redress their grievances. In short, the needs of small business require a trade mechanism that will address the problem of export subsidies in a quick, inexpensive, and fair manner, thus ensuring these industries economic relief from unfair competition.

In summary, Mr. Chairman, the free marketplace is an idea as old as our nation and the potato, lumber, and fishing industries in Maine ask no more than a fair shake to make free enterprise work. Currently, we are seeing the end of a way of life for many of our citizens and we can not allow this to continue. In an effort to address our U.S. trade policy in a comprehensive manner, we must seek measures that will correct the existing trade imbalances where they result in the elimination of our domestic industries.

With these thoughts in mind, Mr. Chairman, I strongly urge that your subcommittee review and expand this legislation to ensure that these trade remedies are made more accessible to all, rich and poor, small and large, and fashioned in a manner that will streamline the existing complexities. As a result, small businesses will view these trade remedies as a means to reduce trade frictions, and not the other way around.

STATEMENT

of

AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

before the

SUBCOMMITTEE ON TRADE

COMMITTEE ON WAYS AND MEANS

for

HEARINGS ON

RECIPROCAL TRADE AND MARKET ACCESS LEGISLATION

July 26, 1982

American Association of
Exporters *and*
Importers *11 West 42nd Street, New York, N.Y. 10036 (212) 944-2230*

The American Association of Exporters and Importers, formerly the American Importers Association, represents 1400 U.S. company-members engaged in the export, import, and distribution of goods between the United States and countries throughout the world. The multitude of products sold by AAEI member companies cover a broad range from textiles and apparel, chemicals, machinery, electronics, footwear and food to automobiles, wines and specialty items. In addition, many organizations serving the trade community -- custom brokers, freight forwarders, banks, attorneys and insurance firms -- are active members of AAEI.

The Association changed its name and broadened its purpose last year in response to a general shift of many members into exporting, and to the widespread and deeply felt belief among the membership that it was no longer realistic to focus solely on the concerns of importers. It was realized that the policy of the United States toward imports must inevitably be tied in with the health of the international trading system and the ability of American businesses to function successfully in the global marketplace. Increasingly, AAEI members have found, American firms do not function solely as importers or as exporters, but as buyers and sellers in a global marketplace, where the origin and destination of goods is less important than the ability of our companies to compete effectively and on equal terms with other companies operating in the same marketplace.

AAEI will now be looking closely at the practical problems encountered by American businesses in foreign markets. We expect we will develop information and suggestions useful to Executive Branch officials concerned with implementing U.S. trade policy, and we will see implications for legislative policy that arise from our work with the practical problems of exporting.

This Subcommittee is, very usefully, focusing on one of the critical problems in U.S. international trade policy -- namely, whether the international trading system has produced the kind of equally open, competitive world market that was envisaged when the GATT system was launched and which has been the objective of America's trade negotiations and trade concessions since 1947.

The GATT rules and the successive rounds of trade agreements have made a good start. Any critique of the system as it operates today must of course be mindful of these benefits and not take actions which would endanger them. However, the substantial progress made should not blind us to the problems the trading system faces today. If we do not deal with those problems in a constructive and effective fashion, the stresses and strains that result will themselves undermine past achievements.

The present problem results from discovery that there is more to be done in achieving an open market than what the GATT negotiations have focused on in the past. Past negotiations have greatly reduced tariffs and quotas, and have made a good (though incomplete)

start at reducing the non-tariff barriers that result from governmental regulations.

Our government has begun to bring complaints of violations of GATT rules, and AAEI supports vigorous pursuit of U.S. rights under GATT through the GATT mechanism when consultations do not produce reasonable results. The reduction of those barriers has exposed a "third layer" of obstacles to the achievement of a genuinely competitive marketplace. These are the obstacles that result from the business structures and business practices in different trading nations.

As the United States has reduced its tariffs and other barriers in response to international agreements, foreign businesses have found fairly ready access to our markets. We have an extraordinarily efficient nationwide distribution system which is receptive to new products, whether they originate at home or abroad. Our antitrust laws have prevented domestic companies with long established market shares from erecting private barriers that would keep out new competition, in effect replacing the governmental barriers that had been dismantled. And, though our business system is large and quite complicated, it is highly transparent and experts are available -- in law, marketing, finance, and technology -- to help foreign competitors establish themselves in our market on terms of legal and practical equality with domestic enterprises.

American businesses are discovering that not all of our major trading partners maintain the same pro-competitive rules, transparency, and receptivenss to new competition. Integrated industry structures, and traditions of close collaboration within company groups and industry sectors, can mean that a new competitor from abroad, with a quality product that is price competitive, has difficulty finding customers. These structural and cultural practices may well be perfectly understandable in light of the past needs and resources of the foreign nations when they were operating as national economies. But the same structures and practices can serve as obstacles to the integration of those countries into a global market.

These obstacles are particularly difficult for smaller and middle sized American companies, who may not have the power or the endurance necessary to work their way, over a period of many years, into a foreign business system which does not have institutional channels that facilitate their entry. And yet, as our government officials have frequently noted, it is among these companies, often making competitive and innovative products, that much of our untapped export potential may be found. Large companies are also expressing unhappiness with the current situation.

AAEI believes the problem warrants continuing legislative attention. What should be done now?

First, we strongly support continuing Executive Branch studies of the conditions affecting access for U.S. products in foreign markets. The problems and obstacles faced by U.S. enterprises are complex and often subtle. They vary from one country to another, and from one industry and product sector to another. Some problems, such as foreign language and consumer preferences, may not be susceptible to any reasonable remedy. On the other hand, as we know from U.S. experience in establishing competition policy, interlocking business relationships, rigid distributor relations, and reciprocal dealing practices which unreasonably suppress competitive opportunities can be altered. The ways to alter them may also vary greatly from one country or industry to another. In many respects, the problems are intrinsically practical, and must be dealt with through specific remedies that attend to practical details, rather than through broad legislative fiats. These studies offer the hope of gaining an understanding that is necessary to identify problems and devise specific and practical remedies.

AAEI believes the Subcommittee should consider whether the current resources of the Executive Branch are adequate to conduct the studies called for in the legislation. Since our government has not historically been involved in industry sectoral policy, there is no substantial reservoir of personnel with the practical business and analytical skills needed for prompt, sensitive, and competent investigations of the sort that are needed. We hope the Subcommittee

will satisfy itself that, if the studies are mandated and legislation adopted in this session of Congress, the Executive departments charged with responsibility will be in a position to retain the experts needed for -- let us say -- studies of the conditions affecting the sale of U.S. auto parts in Japan, telecommunications equipment in France, and agricultue products in the Common Market, among others.

Second, our government should of course be charged with responsibility for enforcing legal rules governing our international trading system and for pressing for improvements.

-- If it is discovered through the continuing studies or otherwise that U.S. trade is being impaired by government practices that are inconsistent with international rules, our government should seek enforcement through the established GATT procedures. It does not appear that additional legislation is needed to authorize the Executive to do this. However, as experience is gained with the existing GATT enforcement procedures, it may become desirable for the U.S. trade negotiators to give attention to the adequacy of those enforcement procedures and to seek improvements. It would probably be useful to express this concern in the legislative history accompanying any measure reported out by the Subcommittee.

-- If it is discovered that impediments to foreign market access are resulting from governmental practices which are not regulated by existing international agreements, such as is the case

with trade in various service industry sectors, the Executive should of course be expected to press for international agreements to regulate the governmental practices in question.

-- AAEI applauds H.R. 6773's commitment to multilateral solutions in mandating negotiations on investment and services. We do not believe the legislation should authorize the use of restrictions on import trade in goods as a lever for achieving investment or services access. This could be very costly to the trade liberalization already achieved and would put on U.S. importers and consumers the burden of paying the costs to achieve better access to foreign markets for American investors and suppliers of services. Reciprocal restrictions on investment and on services in the United States would be the appropriate, and effective, levers, if any are needed to secure liberalization of foreign government requirements covering investment and services. Therefore, we strongly urge the deletion of the language of paragraph 301 (a)(2)(B), as contained in Section 4 of the bill. The paragraph would still expand significantly the President's ability to achieve the objectives of the bill.

We suggest that authorizing retaliation through restrictions on trade in goods because of foreign restrictions on investment and services access might signal our trading partners that we are not serious about our prior agreements or our stated negotiating goals.

We also suggest that the legislative history include a call for the Executive Branch or the ITC to survey U.S. practices in the

course of preparing for negotiations and formulating U.S. trade policy. A comprehensive education regarding United States vulnerability to cross-retaliation would be only prudent.

AAEI finds H.R. 5383, with the deletion of sections six and eight, to be a positive and thoughtful aproach to the problems encountered by the services industries.

Third, one of the serious obstacles now being encountered by U.S. exporters is the existence of private sector barriers in foreign countries resulting from industry structures and established busines practices. We urge that section 3 of H.R. 6773 include a call for an examination of the existance and impact of private sector barriers. Not necessarily will every problem raised by the studies by one that could be resolved by consultation, negotiation, or other governmental measures. But, we believe some of them would yield in the face of open examination of their distorting impact on trade.

The current proposals to amend section 301 of the Trade Act of 1974 would not remedy that problem. It is important to note that section 301 applies only to acts, policies, or practices "of a foreign country or instrumentality." Thus structural and cultural obstacles which impede U.S. access to foreign markets would not be reached by section 301.

We believe the legislation, or its legislative history, should make clear that Congress is calling on the President to develop, in consultations with other governments, processes and techniques for

achieving more equitable market access for all trading nations, and to report back to Congress on his progess. As the studies discussed above reveal market access conditions that could be improved, our government should commence active and prompt discussions with the foreign government involved to devise improvements in the quality of the competitive marketplace. Work of this sort has been commenced by the Commerce Department and the Japanese Ministry of International Trade and Industry through the Trade Facilitation Committee, and results have in some cases been quite fruitful, though the process has not had the prominence and wholehearted support within our Executive Branch that it needs. Vigorous government consultations directed at specific problems may lead to improvements -- through simple adjustments of private business practices in some cases, through changes in national regulations or legislation (affecting business structure and practices) in other cases. Sometimes identification of the problem may itself suggest useful new forms of international agreements.

As the problems involved in this "third layer" of trade obstacles are more fully understood, we will be in a position to determine whether we wish to urge foreign governments to take on responsibility for eliminating private sector practices which unreasonably impair competitive opportunities in their markets. To achieve a genuinely effective global market that is open to competitors from all the participating countries, the national governments will have

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to take responsibility for preventing cartels, exclusive agreements, and other private arrangements that impede competition. In some measure, it will be necessary for national governments to coordinate their competition policies. And a government that refuses to police anti-competitive conduct within its borders may be guilty of nullifying and impairing the right of access to its market that other nations enjoy under the GATT. A congressional mandate for the President to develop, in consultation with other governments, processes and techniques for achieving improved practical market access should of course include attention to national government efforts to prevent private anti-competitive practices.

Fourth, AAEI believes it would be desirable for Congress to express in the legislative statement of purposes that a goal of U.S. trade policy is that businesses operating in the global marketplace should enjoy practical conditions of market access in each country which are substantially equivalent to those generally encountered in other countries participating in the multilateral trading system. (We do feel that this does not mean that the United States should decide that its own practices constitute the appropriate standard of market access with which all other countries should comply. This clear statement would set down, as the objective of U.S. policy, establishment of a collective standard of market access for all countries to pursue and further allay concerns that the United States is adopting a unilateral standard).

Similarly, we urge that the word "equitable" (as used in the definition of "unreasonable") in the Presidential mandate under section 301 be interpreted in light of this standard.

We believe few who have given attention to the growth of the international trading system since World War II, and who are concerned with its future vitality, will disagree with the goal we suggest. The statement of policy would establish that the United States is concerned not just with the official laws affecting international access to individual country markets, but also with the competitive conditions that are within the control of powerful, but non-governmental, business organizations in each country. The policy would also establish that the United States is concerned not just with the evenhandedness of trade concessions as they are negotiated, but with the quality of the market that ultimately results from the negotiations. Obviously an open market with substantial equivalence of access for all participants is not a goal which will be achieved immediately. But unless that goal is clearly expressed and vigorously pursued, our business managers, investors, and workers will lose confidence in the trading system. They will see it as exposing them to competition that is unfair, and they will seek protection from it.

The statement of policy would constitute important guidance for U.S. officials and for foreign nations interested in working with the United States to create a more satisfactory global marketplace.

Fifth, AAEI strongly supports those sections of H.R. 5383 and H.R. 6773 which set forth negotiating objectives with respect to foreign investment. However, we urge careful consideration of the proper approach in this area. Restrictions on foreign direct investment per se raise extremely sensitive issues of sovereignty which are of concern to the United States as well as other countries. We suggest that the best approach to these problems may be through individual agreements negotiated as adjuncts to treaties of Friendship, Commerce and Navigation where the various differences in national economic conditions can be taken into account. Such an approach is similar to that used by the United States in taxation matters. Alternatively, bilateral treaties might be based on a multilaterally negotiated code as has been done in commercial aviation where our bilateral treaties derive from the Convention on International Civil Aviation (61 Stat. 1180). The recently concluded treaty with Egypt serves as a model for this bilateral approach.

Our comments thus far have been concerned solely with the problem of market access, because that is the objective of the bills under consideration by this Subcommittee. There are some who argue, however, that market access is not a problem deserving of legislative attention at this time. We agree that problems being encountered by U.S. companies in foreign markets at the present time are also the result of the lack of competitiveness of American companies --either because they are not technologically proficient and cost

competitive, and/or because the dollar is badly overvalued relative to other key currencies pricing U.S. goods out of foreign markets. Our high interest rates also delay very necessary modernization of plant and equipment. Furthermore, we are also dismayed by other self-inflicted wounds which weaken U.S. export efforts. However, the existence of these problems does not diminish the problem of market access.

The Association has long supported the international trading system by opposing U.S. tariff barriers and other obstacles to imports. American business has benefitted from the progress that has been made. We feel that the linkage between imports and exports should not be overlooked or minimized. U.S. moves which are viewed as inconsistant with international agreements would of course raise the danger of retaliation against U.S. exports. As businessmen we are increasingly operating in a global market even when we sell at home. We must be concerned that we can reach all the customers that our competitors are able to reach without regard to national boundaries. AAEI is pleased that this Committee is examining ways to preserve and build upon the progress toward an efficiently functioning global market that was begun thirty-five years ago.

STATMENT OF

American Electronics Association

before the

Subcommittee on Trade
House Ways and Means Committee
August 2, 1982

Summary

Congress should enact legislation which would:

- Be consistent with the letter and spirit of the GATT system and United States' obligations thereunder;
- Mandate and authorize the President to negotiate bilateral and multilateral treaties covering foreign direct investment and trade in services;
- Expand the authority of the President under Section 301 of the Trade Act of 1974 to respond to foreign barriers to U.S. foreign direct investment;
- Call on the Trade Representative and the Secretary of Commerce to compile an inventory of foreign non-tariff barriers to U.S. exports of products and services, and foreign direct investment;
- Require a periodic report to Congress by the Trade Representative and Secretary of Commerce on the steps planned or taken to have these foreign barriers reduced or eliminated; and
- Recommend special attention to be focused on the high technology sector.

AEA American Electronics Association
1612 K Street, N.W., Washington, D.C. 20006

Statement of the
American Electronics Association

Before the Subcommittee on Trade
House Ways and Means Committee
August 2, 1982

Mr. Chairman and Members of this Distinguished Committee:

The American Electronics Association appreciates this opportunity to submit written testimony concerning reciprocal trade legislation and the issue of reciprocal market access. AEA is a trade association of more than 1,900 electronics companies in 43 states. Our members manufacture electronic components and systems or supply products and services in the information processing industries. Our member companies are mostly small businesses currently employing fewer than 200 people.

U.S. exports of products manufactured and sold by AEA member companies have continued to grow. Over the six-month period of January through June 1980, there was a total of $2.7 billion of exports of selected high technology products. This is an increase of more than 25 percent over the same period in 1979. While imports of similar products into the United States also enjoyed a healthy growth, the ratio of exports to imports remained at a high ratio of almost 3.5 to 1.

AEA appreciates the leadership you and the members of the Subcommittee have shown in focusing Congress' attention and concern on the problems U.S. firms face abroad. We welcome this opportunity to testify in support of assisting the United States Trade Representative in reducing barriers abroad to U.S. exports of products, services and foreign investment. We believe that

this country must be forthright and aggressive in pursuing our trade enhancing tax measures you passed last year, will go a long way toward insuring the future competitiveness of U.S. electronics industries in world markets.

AEA believes that today we are at an important point of time for U.S. trade and investment policy. Great pressure is being placed on the GATT system of international trading rules because of what it does, and what it doesn't do. On the one hand protectionist forces, pointing to the visible effects of the current worldwide recession, are getting stronger both here in the U.S. and abroad. The political pressure is real to raise new tariff and non-tariff barriers to product exports, and to reinforce existing ones. On the other hand, increased use of "industrial policies" is resulting in protectionist mechanisms that are not covered by the GATT rules, but which threaten to undo the significant progress made since GATT negotiations began in 1948.

OBJECTIVES OF TRADE LEGISLATION

AEA has assessed these domestic and foreign political pressures, and analyzed carefully the bills introduced by members of this Subcommittee and Congress. We believe now is the time for the U.S. to do all it can to resist protectionism here and overseas by working to shore up the GATT system and to expand the system of international rules to cover foreign investment and services. By initiating and passing appropriate legislation, Congress can address this dual threat to continued expansion of world markets by providing our negotiators the statutory backup

and policy guidance they need to be successful in this critical endeavor. We think it is important that any legislation in this area:

- be consistent with the letter and spirit of the GATT system and United States' obligations thereunder;
- mandate and authorize the President to negotiate bilateral and multilateral threaties covering foreign direct investment and trade in services;
- expand the authority of the President under Section 301 of the Trade Act of 1974 to respond to foreign barriers to U.S. foreign direct investment;
- call on the Trade Representative and the Secretary of Commerce to compile an inventory of foreign non-tariff barriers to U.S. exports of products and services, and foreign direct investment;
- require a periodic report to Congress by the Trade Representative and Secretary of Commerce on the steps planned or taken to have these foreign barriers reduced or eliminated; and
- provide essential special attention on the high technology sector.

Several bills before this Subcommittee, such as H.R.6773, and H.R.5596, meet some of these objectives and principles. AEA is pleased that Messrs. Shannon, Gibbons, Guarini, and Matsui have introduced H.R.6433, which addresses all of them. We urge this Subcommittee to report out a bil whose provisions contain these elements. It will thereby assist our Trade Representative

in reducing barriers abroad to U.S. products, services and foreign investment. And by doing so it will alleviate the growing pressure in Congress to enact new protectionist and other GATT-inconsistent trade laws.

Let us now discuss our reasoning in light of some of the major difficulties our members increasingly face abroad.

HIGH TECHNOLOGY

If we examine our trade performance over the last two decades, it's clear that our R&D intensive, high technology industries are performing well in holding up the U.S. balance of trade. Our non R&D intensive, less competitive industries are in trouble, some partly because of foreign industrial policies that have targeted these sectors for special attention.

The U.S. has a distinct comparative advantage in high technology manufactured products and related services. Unfortunately, nearly all countries, industrialized as well as the Less-Developed-Countries, want to have their own high technology industries precisely because of the benefits the United States now reaps from them: new and better jobs, increased productivity, greater income and the better standard of living which results. Consequently, many governments have targeted this sector for intervention via industrial policies, combining protectionism and active support.

Our industries require worldwide market in order to support the increasingly expensive R&D and capital investments needed to stay in the forefront of technology and meet customer needs. The U.S. needs to be agressive on efforts to keep these

markets open to competition based on price and quality, other than on national origin. If the U.S. does not, we run the risk of losing the enormous benefits that our technologies can bring to the United States and to other countries. In our industry, we're only seeing the crudest beginnings of what can be accomplished to improve productivity and raise the world's standard of living. We are pleased that Ambassador Brock intends to place the sector on the agenda for the GATT Ministerial talks. We believe that the provisions of H.R.6433, the "High Technology Trade Act of 1982", provides a comprehensive basis and approach for negotiations in the forum or in other bilateral or multilateral talks with our principlal trading partners.

FOREIGN INVESTMENT BARRIERS

For the last several decades, the U.S. has led the way in getting other countries to reduce their tariff barriers to U.S. product exports. As these feasible tariff barriers have come down, however, new, more subtle non-tariff barriers appeared. While the Tokyo Round MTN agreements addressed some of these non-tariff barriers, many remain.

Unfortunately, some of the most serious of the non-tariff barriers are ones which are not covered by any multilateral rules, namely restrictions on foreign direct investment. This situation has been in part caused and compounded by two factors.

One, U.S. international investment policy has been neutral. That is, U.S. policy has been one of neither encouraging nor discouraging flows of direct foreign investments, and Congress has chosen to lead by example and by avoiding barriers to foreign

direct investment in the U.S. Unfortunately, we haven't coupled this exemplary role with agressive efforts to see that it is followed by others. At the same time, our negotiators' attention has been focused on efforts to reduce barriers to products trade under the GATT.

This neutral and passive policy has been undergoing review and consideration by the Executive Branch, and we are encouraged by actions which signal its increased priority status on the United States Trade Representative's agenda.

Two, the public discussion of this issue is quite sensitive for U.S. firms. Companies do not complain openly because they fear retribution. For years they have had to grapple with investment restrictions on their own, due in large measure to the lack of an aggressive U.S. policy. In some countries, firms have been able to negotiate agreements, often skewed in favor of the host nation, but which at least give them some limited access. These arrangements are something less than secure and subject to change at any moment. Because they are so tenuous, most firms are understandably reticent to be indentified publicly with any criticism of the governments involved.

But that's not because the problem is not wide spead. It is. Restrictions on foreign direct investment are formidable, especially for the smaller firm.

In our industry in order to sell computer systems or other high technology products to customers overseas there must be a commitment -- made by us -- to provide service and maintenance for the products we sell. We must have the ability to establish

local subsidiaries for these purposes. It is for this reason that we view investment and trade as two sides to the same coin. Their interaction is vital since they provide mutual support for each other in world competition. The ability to invest in manufacturing, sales and service operations is a primary vehicle of trade today.

For young companies, the most onerous of these are restrictions on our ability to establish local, majority owned sales and services subsidiaries that we can manage properly. In an increasing numer of countries, we cannot now establish such subsidiaries unless we are willing to surrender majority ownership to a local partner, and hence, our control over the operations, and over our technology which we developed at great expense. The ability of an American company to take advantage of business opportunities in a rational and timely way is limited if it has approval for such actions. The majority owner may have no interest in our knowledge of the business and may be unable to appreciate the dynamics of the situation as they arise.

There are a host of other restrictions on foreign direct investment, including export performance requirements, demands that a certain percentage of the final product contain materials or technology that is "sourced" locally, requirements that the foreign firm transfer the technology or "knowhow" either immediately or after a certain period of time, requirements for local training and conduct of R&D within the host country, and so on. In combination, these restrictions make it unattractive for U.S. firms to invest. Unfortunately, in many cases a decision not to meet these demands may deny a U.S. firm from fully participating in these markets.

Mr. Chairman, companies such as we represent are not out simply to take advantage of an economy, and then exist without leaving anything behind. We are interested in complete, long term involvement in those economies, which means realistically contributing to the local infrastructure and technology bsse. But these contributions flow naturally from the demands of our business. They cannot be dictated by government fiat. We have a mutual interest which can be met only by allowing a competitive, fast-moving business to be managed like one.

With these kinds of problems in mind, we strongly support legislation that would mandate and authorize our negotiators to seek bilateral and multilateral agreements to reduce the trade and capital flow distorting effects of such investment restrictions. In the short term, bilateral treaties are the practical solution. We would be following the practices of France, Germany, Japan and others in doing so. The longer term objective should be multilateral solution, based on the numerous bilateral arrangement that could provide the necessary momentum for new international rules.

We also welcome expansion of the President's authority to respond under Section 301 if such negotiations are unsuccessful and such practices continued unjustifiably and unreasonably to burden, restrict, or discrimate against U.S. negotiators presently have little leverage in this area. Presidential authority to respond would provide an appropriate and needed bargaining tool.

INVENTORY OF NTBS TO PRODUCTS, SERVICES AND FOREIGN INVESTMENT

AEA would support legislation to require the USTR and the Commerce Department to develop an inventory of the major non-

tariff barriers abroad to U.S. product and service exports, and foreign direct investment. We also support provisions that would require periodic reports to the Congress on the steps the United States Trade Representative has taken, or plans to take, to have these barriers reduced or eliminated.

CONSISTENCY WITH THE GATT

Since the creation of the General Agreement on Tariffs and Trade (GATT) the United States has taken the lead role in efforts to persuade our trading partners to adopt the GATT's basic multilateral principles of national and most-favored-nation treatment, and thereby reduce world barriers to product exports. In asserting this leadership role, Congress has deliberately chosen to lead by example by passing trade laws to mirror those of the GATT; I think that it is fair to say that without the U.S. commitment, there would be far more trade barriers abroad than there are today.

AEA believes it is absolutely vital that the U.S. not abdicate this leadership role. Any action that would compromise this role would likely lead to greater barriers to our product exports. There are many countries which would welcome an excuse to bend to domestic pressures and erect new import restrictions. There are others which might well feel compelled to retaliate if U.S. legislation were to affect exports negatively. And chances are good that our strongest, most competitive, exporters would be the ones to bear the brunt of either reaction. The negative consequences for jobs, income and related tax revenues could be enormous if this were to occur.

The GATT currently provides for reciprocity under mutually agreed procedures and rules. AEA supports that process. AEA therefore would support legislation which would reinforce the U.S. commitment to that process. We would thereby support its continued use in assessing whether a given country or group of countries is measuring up in an overall sense, given the specific circumstances, to its trade agreement or GATT obligation and responsibilities and thereby be eligible for future U.S. trade concessions.

AEA opposes legislation that would allow unilateral retailiation or require bilateral "reciprocity" outside the GATT on an industry sector or product basis. Such legislation would fly in the face of GATT principles and obligations, and would invite protectionism and retaliation here and abroad.

We must aggressively enforce abroad our trade and investment rights and interests. We cannot afford to abdicate our leadership for free and open markets for trade and investment. We must be aggressive at home in resisting the temptation to raise trade barriers. And we must be forward-looking and see to the needs of our strongest industries before the weight of barriers abroad become so heavy as to be politically too difficult to eliminate. Viewed from our perspective, we no longer have the luxury of time. We need legislation and policy that addresses these objectives now.

Thank you again for this opportunity to submit our comments for the record.

WRITTEN STATEMENT OF

AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION

for the

House of Representatives Committee on Finance

Subcommittee on Trade

H.R. 5383, H.R. 5596, H.R. 6433, H.R. 6773
and other Reciprocity Bills

July 30, 1982

American International Automobile Dealers Association represents the interests of 7,000 American dealers who sell imported automobiles, and the 165,000 U.S. employees of these dealers. For most of the past decade, the automobile industry has occupied a central place in the rapid evolution of international economic relations. In the interests of our membership and consistent with the broader international interest of the United States in promoting greater productivity at home and fair treatment of U.S. industries abroad, we urge that legislative action for reciprocity be consistent with our international trade obligations; that it be multilateral rather than bilateral; that we strengthen the negotiating mandate for a more liberalized world trading system and a reduction of barriers to U.S. trade.

AIADA would support the strengthening of existing agreements to cover trade in services, investment and high technology. We believe that the multilateral negotiating process is our best opportunity for progress toward a more open trading system.

While the word reciprocity has been associated with liberalizing trade in the past, now the meaning is less clear. Our concern is that reciprocity will be used as a weapon for retaliation, and that the impact will be to close markets rather than increasing market access. AIADA supports a U.S. policy for the reduction of all barriers to trade.

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The risks of Reciprocity legislation are far greater than any possible advantage. American jobs are created by a climate of free trade. Jobs dependent on American exports will be destroyed if we close off markets. Imports increase consumer choice and offer a competitive challenge. We need to actively support export promotion for our own products, as well as reviewing those U.S. laws which impede our ability to compete in the world market. AIADA advocates a strong aggressive export policy based upon a sound economic policy in the U.S. and removal of some of the governmentally imposed barriers to enable U.S. companies to compete more effectively overseas.

In particular, we call on the Administration to move aggressively against proliferating performance requirements, combined with lavish investment incentives, as promulgated by many developing countries and in some instances, by industrialized nations. These performance requirements, including such trade-distorting practices as domestic content laws and export requirements, are drawing capital investment and jobs from the United States.

In the automobile industry in particular, the combination of investment incentives and performance requirements have been a major factor in the decision of American automobile manufacturers to concentrate much of their capital investment and growth planning abroad. Consequently, while capital spending plans in the United States have been cut back in the past year, General Motors and Ford are proceeding with foreign investment programs that include six major GM plants now under construction in Europe, Ford engine plants in Mexico and other expansion plans in Germany, England, France, Spain and elsewhere.

The nation's imported automobile dealers are particularly concerned lest the current interest in reciprocity legislation disguise a drive to return to the policies of bilateralism that controlled our trade programs in the 'thirties.

Bilateral trade policies in the late 1920's and throughout the 1930's contributed to the deepening and prolonging of the worst economic disaster of the 20th century, the Great Depression of 1929-1938. Those old enough to remember that era without nostalgia are not anxious to repeat the experience.

The great leap forward in world trade began in the post-war era with the introduction of multilateral trade agreements, a system whereby the nations of the world have agreed mutually to observe and respect certain standards and policies. The foundation of this program is the "most favored nation" agreement, under which no nation will be treated less favorably than another in trade matters.

Under multilateralism, United States exports have grown from $14.5 billion in 1950 to $365 billion in 1981; from five percent of our gross national product to 12.5 percent of our GNP. Today, the United States is the world's largest exporter. In dollar volume, our exports are 65 percent greater than Japan's.

All of which makes one wonder, why would rational intelligent men advocate a return to the failed and discredited policies of fifty years ago? Irritation over our bilateral trade deficit with Japan and the trade barriers - both real and imagined - that Japan erects against some U.S. goods are insufficient reasons to scuttle the most successful trade system in history and risk a world trade war with the inevitable worldwide depression that would follow.

In large part, this destructive attitude is based on a failure to comprehend that our present trade deficit is due almost entirely to a depressed economy and an over-valued dollar, bloated by historically high interest rates. Compounding the error is a chauvinist misconception that the U.S. market is free and open to goods from other countries, while they maintain

barriers to our exports.

The U.S. market is no more free or open than most other nations. In the very conspicuous matter of automobiles, the United States maintains a near-prohibitive 25 percent duty on imported trucks; we have a discriminatory 2.8 percent duty on imports from all countries but Canada, which is permitted duty-free access; we have negotiated a "voluntary" quota on Japanese automobiles, which remains a quota, no matter how many euphemisms are applied to describe it.

In addition, the United States maintains quotas or other restrictions on sugar, textiles, dairy products, wheat, peanuts, cotton, steel, meat, chemicals and other products. If Reciprocity becomes the foundation of world trade, the United States would surely become the object of retaliation against these barriers by all our trading partners.

The United States can resolve its trade problems by restoring our economy, bringing interest rates down to reasonable levels that will, in turn, reduce the dollar to realistic values in relation to other currencies, and by improving our productivity and technology so that our products become competitive with those of other nations. A return to protectionism, no matter what the label, will only exacerbate our condition.

The Case Against Reciprocity Legislation

Several members of Congress have introduced bills which would expand the President's authority under Section 301 of the Trade Act of 1974 to permit him to impose import restrictions or take other actions against foreign trade practices that deny to U.S. business "reciprocal market access" or "competitive opportunities substantially equivalent" to those offered to foreign business in the U.S. Following is a summary of the reasons why such reciprocity legislation would not serve U.S. interests.

1. A Reciprocity Approach Would Abandon Established and Proven Trade Policies, with the Likely Result of Less, Not More, U.S. and World Trade

U.S. and world international trade have grown dramatically during the past thirty years. The U.S. today is the world's largest trader. The growth in U.S. and world trade has resulted directly from the adoption of liberal trade policies by the U.S. and its trade partners. As now embodied in U.S. trade law and the GATT and MTN Codes, these policies are:

* The principle of multilateralism, i.e. the attainment of equity and reciprocity in trade relations through an overall balance of trade benefits and concessions negotiated among all countries, not through "special deals," such as discriminatory or preferential trade arrangements;
* The principle of unconditional most-favored nation (MFN) treatment, i.e., the extension of tariff and trade benefits negotiated by countries to all other countries unconditionally and without discrimination; and
* The principle of trade negotiation, i.e., the elimination of trade barriers and the expansion of world trade through a process of negotiation rather than unilateral action and reaction by trade partners.

As embodied in the current proposals, reciprocity legislation would mark a radical departure from each of these established principles.

* A reciprocity approach would abandon multilateralism in favor of *bilateralism*, i.e. the pursuit of reciprocity as measured by the balance of the trade advantages existing at a fixed point in time between the U.S. and each trade partner;
* A reciprocity approach would constitute a return to *conditional MFN*,

i.e. the conditioning of individual trade benefits on commensurate concessions, a policy that proved disastrous in the 1920's; and

* A reciprocity approach would entail a departure from a trading system characterized by negotiations to a regime of *unilateral actions and reactions* to foreign trade practices.

U.S. and international trade experience demonstrates that a policy based on these narrow concepts is less likely to achieve reciprocal trade relationships than it is to result in diminished national and world trade. The U.S. rejected these policies earlier this century because it found that they discouraged rather than fostered market access and competitive opportunities for foreign products around the world. The U.S. adopted liberal trade policies instead as a means of opening world markets and expanding world trade opportunities. The phenomenal success enjoyed by the U.S. under these established policies vindicates that decision and counsels against a retreat to reciprocity as a basis for attaining greater equity in trade.

2. The Reciprocity Approach Embodied in Current Legislative Proposals Is Unachievable, Unworkable, and Inequitable

A. Reciprocity is Unachievable

The reciprocity proposals would confer authority on the President to retaliate whenever bilateral equivalence - defined on a product-by product, sector-by-sector, or country-by-country basis- is deemed to be unattained in U.S. trade relations. Any trade policy, based on narrow equivalency concepts, is unachievable.

Product or sectoral equivalence in bilateral trade relations is infeasible because it ignores the principle of comparative advantage, i.e. all countries export products they produce relatively efficiently and import products they produce relatively inefficiently; product or sectoral imbalances are therefore inevitable among countries.

Country-by-country reciprocity is equally unachievable, since no two countries' import needs and export advantages are wholly complementary; bilateral trade imbalances inevitably will result.

The fact that sectoral and bilateral deficits will persist in national and world trade underscores the likelihood that reciprocity legislation will serve as a weapon for retaliation and protectionism rather than an instrument for achieving fairness in U.S. trade relations.

B. Reciprocity is Unworkable

The reciprocity bills employ various terms to refer to reciprocity - e.g. "reciprocal market access" or "substantially equivalent competitive opportunities" - but they do not define the terms or otherwise describe the practices that would constitute denial of reciprocity under Section 301. The absence of any definition in the bills is symptomatic of a basic flaw in the reciprocity approach - the absence of adequate standards for evaluating reciprocity and the inherent complexity of applying any such approach to different national trade practices.

"Reciprocity" requires a comparative judgment, measuring U.S. opportunities abroad against foreign opportunities in the U.S. A reciprocity policy therefore presents the following inseparable practical difficulties for those charged with implementing or enforcing the legislation:

* Would reciprocity mean that foreign treatment must yield *results* for the U.S. equal to those achieved by the foreign country in the U.S., measured by sectoral or trade balances or market shares? The U.S. realistically could not compel other countries to intervene in their domestic markets to the extent required to effect such results. Nor would such results be desirable since they would distort trade between products as to which each country enjoyed comparative advantages.

* If reciprocity did not require equivalent results, would it require foreign *opportunities* for the U.S. that are equal to those available in the U.S.? An "opportunities-oriented" approach applied on a *country-by-country basis* would require the U.S. to take into account all of the comparative opportunities across the whole range of products and sectors in the respective countries, including not only factors bearing upon the trade practices of both countries, but also those relating to the competitiveness of the U.S. products relative to domestic and other foreign products in the foreign markets and the capacity of U.S. industry to meet demand in such markets. If applied on a more limited *product or sectoral basis*, this approach would ignore the fundamental structural, cultural and historical differences between any two nations that affect relative opportunities, and disregard the respective comparative economic advantages of each country. In short, inordinately complex comparative economic analyses would be required by such an approach, resulting in widely divergent applications of "reciprocity" to each U.S.trade partner.

C. Reciprocity is Unfair

The objectives of reciprocity legislation, i.e. achieving fair trade and eliminating unfair trade advantages enjoyed by some foreign countries, are important. Reciprocity legislation, however, would not advance these objectives. The current proposals would adopt instead a one-sided view of fairness, i.e. they would measure market access and competitive opportunities in foreign countries against nonindigenous (i.e. U.S.) standards and require foreign countries to treat U.S. business in accordance with

those standards. Thus, they would allow a U.S. company not afforded access to a foreign market on the same basis as it is available to foreign companies in the U.S. market to initiate a proceeding for retaliation against such "non-reciprocal" practice, without regard to any structural, historical or cultural difference that may necessitate or justify the different treatment by the foreign country.

A policy that disregards differences in national economies and imposes foreign standards on other countries unreasonably intrudes into the domestic economies of trade partners. For example, when applied to the Japanese distribution system, reciprocity legislation would require profound structural changes by the Japanese to facilitate greater U.S. penetration. Trade legislation that seeks to require instant national changes of this magnitude by threat of retaliation is neither fair nor likely to achieve its objectives.

3. Reciprocity Legislation Will Not Alter The Overall U.S. Merchandise Trade Deficit or Bilateral Trade Imbalance

Reciprocity legislation would have little effect on what is often advanced as a major reason for enacting it - the U.S. merchandise trade deficit and the bilateral trade imbalance with Japan. The size of these deficits results principally from three factors, none of which would be changed by reciprocity legislation:

* The enormous cost of U.S. oil imports, i.e. the U.S. would have a merchandise trade *surplus* without its dependence on oil imports;
* The recent appreciation of the dollar relative to foreign currencies, i.e., the trade deficit with Japan might be $3 billion to $4 billion less without the current disequilibrium in dollar-yen exchange rates; and
* The overall decline in U.S. productivity, i.e. the single most

important cause of declining competitiveness of U.S. products abroad.

More importantly, merchandise trade deficits and bilateral trade imbalances are not accurate reflections of the U.S. economic position. The U.S. is experiencing a surplus in its current account (i.e. the annual balance of payments for U.S. trade in merchandise, services and unilateral transfers), a condition not enjoyed by Japan. U.S. trade is far from reaching any crisis stage.

America's continuing competitiveness requires ultimately, not a policy of trade retaliation, but aggressive pursuit of economic initiatives designed to improve U.S. productivity, a sustained effort to lessen U.S. dependence on foreign energy sources, and continued expansion of the world trading system, along with enforcement of U.S. trade rights. A reciprocity approach would fail to rectify trade imbalances while accomplishing none of these more important objectives.

4. Reciprocity Legislation Would Risk Retaliation Against the U.S. by its Trade Partners and Severe Economic Costs Upon the U.S. Domestic Economy

The risks involved in adopting reciprocity policies, and their potential costs to the U.S. economy, are substantial.

* Reciprocity policies could be applied against the U.S., resulting in the closing of markets now open to the U.S.;
* U.S. trade partners could exercise GATT remedies against the U.S., resulting in the withdrawal of trade concessions by U.S. trade partners; and
* U.S. trade partners could simply counter-retaliate, resulting in protectionist measures designed to harm U.S. exports.

In general, U.S. business would be very vulnerable to these forms of retaliation. The U.S.now maintains more formal quotas than many other

countries and it has numerous other nontariff barriers to trade. These practices could supply a pretext for retaliation against the U.S., particularly by the countries with which the U.S. maintains trade surpluses. As the world's largest trader, the U.S. would have the most to lose from any such trade war.

If U.S. trade partners retaliated against the U.S., the costs for U.S. trade and the domestic economy would be enormous:

* U.S. GNP would decline, i.e. foreign trade now represents over 12 percent of U.S. GNP and its importance is growing;
* U.S. employment would decline, i.e. one out of every eight manufacturing jobs in the U.S. and one-third of all farmland could be affected.

In addition, by relying on import restrictions as the means of achieving its export objectives, reciprocity legislation would impose large economic burdens on the American public.

* Consumer prices and inflation would rise, i.e. the costs of protecting U.S. industries are now running at $15 billion annually in higher prices;
* Competition would be restricted and thus national productivity, and hence employment and income, would decline.

These costs are far too great to risk in no-win bilateral trade contests.

5. The U.S. Should Pursue Its Existing Remedies Rather Than Expand Section 301

Creating a special reciprocity remedy would be especially unwise since recourse to other remedies remains available, within the context of GATT and existing U.S. trade law, for obtaining greater equity in trade.

Furthermore, to the extent the U.S. seeks redress against practices that do not violate the GATT, the sensible alternative would be to seek an

expansion of the GATT, through multilateral and bilateral trade negotiations, not to usurp it through unilateral retaliatory actions. The President has authority under existing legislation to enter into such negotiations for the purpose of eliminating tariff and nontariff barriers (whether such barriers are covered or excluded from GATT). Vigorous exercise of this authority would be the most appropriate way for the U.S. to pursue the objectives of achieving greater equity and reciprocity in U.S. trade relations.

In sum, reciprocity legislation would be an unprecedented, perilous and needless protectionist undertaking - one likely to thwart rather than advance trade liberalization, and damage rather than enhance the U.S. economic position.

STATEMENT FOR THE RECORD

BEFORE THE TRADE SUBCOMMITTEE

OF THE HOUSE WAYS AND MEANS COMMITTEE

HEARING ON H.R. 5205

JULY 26, 1982

STATEMENT OF

DAVID ROBB, ESQ.

GENERAL COUNSEL

CKLW RADIO BROADCASTING LIMITED

BEFORE THE TRADE SUBCOMMITTEE OF
THE HOUSE WAYS AND MEANS COMMITTEE
HEARING ON H.R. 5205
JULY 26, 1982

I am David Robb, Mayor of the City of Grosse Pointe, Michigan and General Counsel for CKLW Radio Broadcasting Limited, which operates CKLW-AM, CKJY-FM and also owns CKLW Radio Sales Inc., with offices located in the Detroit suburb of Southfield, Michigan. I have been counsel for CKLW for many years.

I want to make it clear at the outset that CKLW does not represent the Canadian Government and does not appear here as an advocate of its policies. We have, in fact, made several attempts to convince our ministers of the potential harm to us of the Canadian tax policies. This severe injury to one single radio station -- the almost certain result of the retaliatory bill proposed here -- is the subject of my statement today.

CKLW believes that this proposed bill would have a devastating impact on the activities of a good neighbor of the Detroit community and a tragic economic impact on U.S. citizens, in a State already ravaged by the highest unemployment in the nation (both Detroit and Michigan had 17.3% unemployment in April 1982). I am talking about loss of jobs, significant loss or total loss of business expenditures to U.S. suppliers of goods and services and elimination of a significant contribution to Detroit's community services and charities.

I would like at this point to review the history of CKLW, which conclusively shows that CKLW and the Detroit market are and always have been inseparable.

* CKLW was built 50 years ago by an American broadcast giant, George B. Storer (Storer Broadcasting), who was also the station's first President.
* CKLW was the Detroit outlet for the then infant CBS network and the Mutual Network.
* In 1933 CKLW, the only international cleared channel on the North American continent, directly served 15 Michigan, 27 Ohio and 5 Ontario counties.
* CKLW has continuously for 50 years maintained offices and/or studios and staff in Michigan. To our knowledge no other Canadian border radio broadcaster maintains a registered office in the United States.
* CKLW has for decades been known as "Your Good Neighbor Station."
* When CKLW went to 50,000 Watts in 1949, the Governor of Michigan, G. Mennen Williams, presided over the inaugural ceremonies.
* CKLW has been subject to and paid U.S. State and local taxes throughout its 50-year history, and is subject to U.S. Federal taxes based on agreements

reached by the Competent Authorities of Canada and the United States.

* Traditionally, CKLW has been programmed for the Detroit and adjacent markets using an unbroken line of U.S. radio talent.

* CKLW is represented by the American Federation of Television and Radio Artists, Detroit local.

Incidentally, I want to correct some erroneous information I understand is being circulated concerning how much of CKLW's revenue is derived from the Detroit community. The figure of 90% has been used but in fact ony about 50% of our revenues, or less than $2.5 million annually, comes from the Detroit community.

This legislation, if enacted, will have the effect of:

-- Elimination of 30% of CKLW's full-time work force (comprising approximately 50% of CKLW's total payroll). A loss of jobs to U.S. citizens, whose current income and benefits are in excess of one million dollars annually. There are 23 full-time employees (or 30%) who are U.S. citizens.

-- Elimination of expenditures to U.S. suppliers of goods and services which total in excess of one million dollars annually. Advertising/promotion spent on Detroit media: $500,000. Operating

expenses of Southfield offices: $275,000. Acquisition of U.S. programs: $100,000. Administrative costs: $110,000. Miscellaneous expenditures: $25,000.

-- Elimination of free public service broadcasts to U.S. charities, equivalent to over $300,000 annually in commercial time, plus hundreds of thousands of dollars directly raised for organizations such as Muscular Dystrophy, American Red Cross, March of Dimes, Detroit Board of Education, and many others. One of CKLW's fundraising activities, The Walk for Mankind in 1976, raised $600,000.

By a quirk of fate, at a time in history when borders and governments were less complicated, George B. Storer chose to erect a radio transmitter on his neighbors' land. But for this decision in 1932, CKLW would probably be a Detroit radio station. To keep distances in perspective, downtown Detroit is a mere 5,000 feet from downtown Windsor.

This proposed legislation would all but wipe out the continued service to over a million U.S. listeners. Yet this is by no means the exclusive remedy available to this country in response to Canada's restrictive broadcast tax law.

Section 301 of the Trade Act of 1974 (as amended by the Trade Agreements Act of 1979), 19 U.S.C. § 2411 (1979), grants

the President wide latitude to respond to a broad range of harmful foreign trade practices. If he determines that response by the United States is appropriate, the President may act

> (1) to enforce the rights of the United States under any trade agreement; or
>
> (2) to respond to any act, policy, or practice of a foreign country or instrumentality that --
>
> > (A) is inconsistent with the provisions of, or otherwise denies benefits to the United States under any trade agreement, or
> >
> > (B) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce.

Such response may include "all appropriate and feasible action" within the President's power, and may be made on a nondiscriminatory basis or solely against the products or services of the foreign country or instrumentality involved. Section 301(a), 19 U.S.C. § 2411(a).

Section 301 provides further that the President may, in addition, withhold trade agreement concessions from the foreign country or instrumentality responsible for the injurious practice or may impose special import fees or restrictions on the products and services of that foreign country or instrumentality for whatever period of time he considers "appropriate." Section 301(b), 19 U.S.C. § 2411(b).

Thus, we submit, the wisdom of the proposed legislation should be very, very carefully considered before this route is

chosen over the great variety of other avenues available in response to the Canadian practice.

If this bill is enacted, the $20 million claimed to be lost by the U.S. broadcasters will not be returned to the U.S. To the contrary, in its impact on CKLW, the passage of this bill would deprive the depressed Detroit community of:

* over $1 million annually in jobs;
* over $1 million annually in goods and services expenditures; and
* Over $300,000 annually in public service contributions.

ADDENDUM TO TESTIMONY OF DAVID ROBB

A letter of June 25, 1982, to Robert Lighthizer, Chief Counsel to the Senate Finance Committee, from Leslie Arries, a Buffalo, New York broadcaster makes certain allegations concerning the May 14 testimony of David Robb before the Senate Finance Committee on S. 2051, which is the same in substance as the foregoing statement on H.R. 5205. The following will recite the major contentions contained in that letter, and provid CKLW's point-by-point responses.

1. Mr. Arries states:

"Moreover, the greater Detroit community is not likely to be harmed since Detroit businesses now advertising on CKLW will switch their advertising to numerous other Detroit radio stations. These U.S. stations will, in turn, gain most if not all of the advertising dollars and promotional budget lost by CKLW. The U.S. jobs lost at CKLW's Detroit sales office will be added at the other Detroit stations and the profits lost by CKLW's Canadian owners will be gained by the U.S. owners of these other stations."

CKLW's Answer:

As stated in letters dated June 2, 1982 from the AFTRA Detroit local to Senators Riegle and Levin --

> "There is no question that many if not all of the U.S. employees will lose their jobs if the proposed legislation is enacted, because U.S. advertisers -- who provide approximately half the station's advertising revenues -- will withdraw their advertising because of the doubling in costs.
>
> There is very little chance that these people will be able to find jobs with other broadcasters in the area, whose ability to expand and employ new personnel will be entirely unaffected by the loss of advertising revenues to CKLW. CKLW enables advertisers to reach a market segment not reached by other stations. Thus advertisers will not simply transfer their bookings from CKLW to other stations, but simply withdraw them entirely."

Who is in a better position to judge the effects of this legislation on the economy and jobs in the Detroit community -- the Detroit local of the American Federation of Television and Radio Artists, AFL-CIO, which has represented most radio and

television employees in the Detroit market and has represented CKLW employees since 1951, or Mr. Arries?

2. Mr. Arries states:

"Finally, we find it both incomprehensible and audacious that CKLW would ask the U.S. Congress for special treatment. It is disengenous for CKLW to suggest, as Mr. Robb did during his testimony, that CKLW is an innocent bystander about to be unfairly hurt by S. 2051. Since 1970, CKLW has been owned by the same company, Baton Broadcasting, which is also the licensee of CFTO-TV, a highly popular Toronto, Canada, station. These two stations are the most profitable stations in Canada which are the primary beneficiaries of C-58." (emphasis added.)

CKLW's Answer:

CKLW has placed on the record on many occasions that it is not in a profitable position and has not been profitable for the past two years. Nonetheless, CKLW has continued to carry its U.S. employees, sales offices and full staff even though its losses are substantial!

The suggestion that CFTO-TV is the major beneficiary of C-58 is incorrect. A June 18, 1982 letter of John Bassett, Chairman of Baton Broadcasting, to David Robb, states:

> "My television station in Toronto has been the No. 1 rated station for years and years in every single rating and the Buffalo stations have never been the slightest threat to us in advertising solicitation."

Further, the following facts support Mr. Bassett's statement that CFTO-TV has not received favored status as a result of C-58:

- CFTO-TV has been the No. 1 rated station in Toronto since 1968, eight years prior to the enactment of C-58.

- CFTO-TV has never had unsold Prime Time since 1970.

- CFTO-TV's Prime Time rates have not abnormally increased and have remained constant through and after the period of time that C-58 was passed. If CFTO's Prime Time rates have remained constant, the time period has been sold out, and CFTO has been the No. 1 station in Toronto since 1968, how has CFTO-TV been the major beneficiary of C-58?

3. Mr. Arries states:

"John W. Bassett, Chairman of Baton Broadcasting has been a more than ardent supporter of C-58 since its inception for obvious financial reasons."

And he continues: "Even if S-2051 is enacted as introduced, Baton Broadcasting is still better off than if the Canadian government repealed C-58 since Mr. Bassett's Toronto TV station will gain more profits through C-58 than CKLW will lose through S.2051."

CKLW's Answer (excerpt from June 18, 1982 letter of John Bassett to David Robb):

"For nineteen years I was the publisher of the Toronto Telegram and during that time I strongly fought editorially both original legislation which resulted in the closing of Time magazine's Canadian edition and later when this policy was extended to broadcast media through Bill C-58."

And he continues:

"It is amazing to me in a sort of sad way, that perhaps the strongest pro-American in all the media for thirty years in this country and the strongest advocate of the free exchange of ideas and business between the United States and Canada, would be the only one to suffer any ill-effects from this legislation."

STATEMENT OF

FLORIDA FRUIT & VEGETABLE ASSOCIATION
4401 EAST COLONIAL DRIVE
ORLANDO, FLORIDA 32184

ON

RECIPROCAL TRADE AND MARKET ACCESS LEGISLATION

BEFORE THE

SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

SUBMITTED BY

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July 26, 1982

Reciprocal Trade

The following is submitted on behalf of the Florida Fruit & Vegetable Association, a non-profit co-operative, agricultural association which represents producers of citrus, vegetables, tropical fruit and sugar cane in the State of Florida.

United States businesses have been, and are being, treated unfairly in international trade.

This is not news to Florida agriculture which has experienced this phenomenon each season when it attempts to ship fresh produce into such countries as Japan, Mexico and Europe. These countries have no problem deciding to assist their domestic industries through direct or indirect subsidies or by restricting, through a variety of measures, U.S. imports of competing products.

In the past, the United States' trade policy seemed to be: don't offend our trading partners by asking for reduced tariffs, barriers or subsidies. Meanwhile, U.S. producers (especially certain agricultural industries) suffered. The U.S. did not consider imposing quotas or tariffs as its trading partners did to protect its producers. (We recognize that tariffs and quotas are used by the U.S. in certain instances but these are an appropriate and fair response to particular trading situations.)

Moreover, the United States has maintained a preferential trading position on many commodities under the General System of Preferences, which position benefits foreign competition at the expense of domestic producers and workers.

Such a policy ignores the realities of world trade and places U.S. producers at a distinct competitive disadvantage through no fault of their own. This is not free trade and, it certainly is not fair trade.

We need legislation that will assure equality of market access for all products and services.

Congress has noted the growing concern regarding trade reciprocity. The introduction of some 15 bills in the 97th Congress clearly evidences this fact. Some of the bills focus on reciprocity in specific sectors so that foreign and domestic suppliers of certain products would be treated equally. However, the overall intent is clear: some action is needed to bring U.S. trade policy back into the real world where many U.S. producers are prevented from shipping into certain markets.

Charges of protectionism or threats of retaliation by our trading partners are irrelevant in any discussion of true trade

reciprocity and, should not obscure attempts to maintain the status quo, which perpetuate the advantage to foreign producers at the expense of U.S. producers.

Attempts to prod countries such as Japan to reduce barriers or limit subsidies likely will produce some action but, as in the past, such action will be minimal and designed solely to assuage the United States' (Congress') recent more vocal concerns. Once our claims become less vocal, trade will revert to business-as-usual and, efforts to achieve true reciprocity once again will have been defeated.

Recent legislative action appears to have acceded to the wishful thinking of those who believe that our trading partners will give up voluntarily the advantages that their own laws have won for them. This will not happen.

What is wrong with insisting that our trading partners allow U.S. products and services substantially equivalent market access to what their goods enjoy in this country?

What is wrong with threats of retaliation in certain cases where foreign countries restrict U.S. goods or services?

Section 301 of the Trade Act of 1974, as amended, provides the means to enforce the United States' rights under trade agree-

ments and to respond to foreign trade practices which burden or restrict U.S. commerce. But, we have not had the political courage to enforce this provision even in the face of clear contraventions.

We need action now without having to follow this laborious, time-consuming and, most times, ineffective approach.

If the present law is ineffective either because of the statute's weaknesses or because we lack the resolve to enforce it, then Congress must act and act now to assure fair access to the market place for all U.S. products and services. If an administration is unable or unwilling to invoke Section 301 then, effectively, it has been emasculated. If an administration is unable or unwilling to take forceful and effective retaliatory action against practices of foreign governments which discriminate against U.S. products then our trade laws and agreements are valueless. Congress cannot legislate resolve on a trade policy.

Congress has legislated the means to address trade grievances; however, administrations have been less than forceful in administering these provisions. In addition, administrations have not solved legitimate trade problems through either bilateral or multi-lateral trade agreements.

It is a fact that many of our trading partners continue to deny market access to U.S. goods and services and, it is also a fact that our country grants free or, at least, greater access to products from these same countries. Until our trade policy addresses and deals effectively with these problems there will continue to be call for protectionist policies. And, these calls will be justified.

Certainly, our trade laws and sanctions should apply to services as well as goods and the law should be clear on this point. However, Congress does not need to amend Section 301. This Section, as Congress intended, is quite broad (applies to services) and provides more than adequate retaliatory authority for use by the President. However, this provision must be triggered by petition even if our government possesses factual evidence pertaining to policies or activities of foreign governments which violate international trade agreements, are unjustified, unreasonable, discriminatory, burdensome or restrictive of U.S. trade. We suggest such retaliatory action should be able to be brought about on the government's own motion. The government should be given this authority.

Of course, such broad and powerful authority should be exercised carefully and only in compelling cases. However, a historical view of the use of Section 301 indicates its implementation could have been made more forcefully. Congress

can and should charge the executive branch to take such action more forcefully than in the past but, of course, with reason.

It is reported that the pending trade legislation is designed to urge Japan to open its market to more U.S. products and services. Although Japan may lead the way with its protectionist policies and services, we suggest that there are many other countries with similar restrictive policies which this legislation should address.

Accordingly, we ask that you consider most carefully the pending reciprocity legislation to assure fairness and equality in all trade matters with all of our trading partners. We ask that special concern be given to the agricultural sector and, in particular, the fresh fruit and vegetable industry, which is directly and adversely affected by non-reciprocal trade policies of a number of countries.

Florida producers know their products are wanted by consumers worldwide but, restrictive policies by foreign governments eliminate the opportunity to compete in those markets. Florida producers simply want the opportunity to compete on an equal footing with their competitors. By supporting the equal access legislation now before Congress, this Committee is now in a position to give them that opportunity.

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STATEMENT

Submitted by

THE LABOR-INDUSTRY COALITION FOR INTERNATIONAL TRADE

before the

Committee on Ways and Means
Subcommittee on Trade

Hearing on Reciprocal Trade and
Market Access Legislation

July 26, 1982

The Labor-Industry Coalition for International Trade (LICIT) supports the implementation of a trade policy that vigorously enforces U.S. rights in the international trading system. LICIT hopes that this hearing on reciprocal trade legislation and market access will help bring about a more effective U.S. trade policy. The success of this legislative process will be judged by the results which are achieved in opening up markets to U.S. exports and in ensuring that U.S. firms and workers compete in the world economy on a fair and equitable basis.

LICIT issued a Statement on International Trade in October, 1982 that advocated an open trade policy based on reciprocity among industrialized countries. While full reciprocity cannot be expected from developing countries, the newly industrializing countries must move toward full acceptance of not just the benefits, but also the obligations, of the international trading system. In general terms LICIT defined reciprocity as "open, fair competition for foreign products in the United States market and for American-made products in foreign markets." The emphasis in the LICIT statement was on vigorous enforcement of U.S. rights in the international trading system. It is implicit in the statement that the concept of reciprocity has more to do with a change of policy and the application of negotiating leverage than a major restructuring of U.S. trade laws.

The legislative proposals being considered by this subcommittee attempt to strengthen the hand of the Executive in eliminating foreign trade barriers. The Congressional interest in reciprocity is a healthy sign that the United States is coming to grips with the need to formulate a trade policy that is effective and relevant to the economic conditions facing the United States today. This statement will focus on an extremely important component of those economic conditions affecting American industry -- foreign industrial policies.

In recent years there has been increasing concern in the United States about the impact on the U.S. economy of industrial policies of foreign countries. The interest in industrial policy has resulted from the relative success of particular foreign industries in competition with American industries in the recent past. Specific questions have been raised about the use of industrial policy measures in such countries as Japan, West Germany and France. However, there has been no in depth examination of questions of more basic concern. Do the industrial policies of foreign governments contribute to the declining competitiveness of U.S. producers? To what extent have the industrial policies of governments altered the pattern of investment and job creation and international comparative advantage? What are the effects of foreign industrial policies on the structure of American industry and U.S. international trade and investment?

The number of manufacturing sectors which are the object of industrial policy measures has increased greatly in the past decade. Government measures directed toward more traditional and basic industries like steel, shipbuilding, textiles, apparel and footwear are also being used to promote and strengthen industries such as automobiles, aircraft, semiconductors, computers, robotics, fiber optics, machine tools, heavy machinery and large electrical equipment. Industrial policies are being implemented today not only by such developed countries as Japan, France, West Germany, Canada and Sweden, but also by large developing countries such as Mexico, Brazil, South Korea and India. It is not only the increasing use and scope of these measures that make foreign industrial policies a matter of great concern. This factor is also of growing importance due to the reduction of trade barriers at the border, accomplished through years of GATT negotiations, and the rapidly increasing foreign trade dependence of the U.S. economy.

The United States economy, like the economies of our major trading partners, has become integrated into the world economy to an unprecedented degree (see Table 1). This is especially true with respect to the U.S. industrial sector (see Table 2). In 1980, the United States exported almost one-quarter of its manufacturing output and imported over 21 percent of its manufacturing consumption. Industrial policy measures by other governments to develop, promote or restructure specific industries can directly affect these same industries in the United States and other countries by affecting international trade and investment flows.

The result of the reduction in traditional tariff barriers and the growth in international trade interdependence in the past decade has brought increased attention to the international effects of what have traditionally been considered domestic policies. If domestic policy measures can often be effective substitutes for foreign economic policy measures, then the continuation of a liberal international trading system will require some international consensus on the use of industrial policies which have an adverse effect on the economic interests of others. The major empirical question that needs to be answered is the quantitative magnitude and sectoral impact of foreign industrial policy measures. The central policy issue is the appropriate response, if any, of the United States with respect to foreign industrial policies.

Foreign Industrial Policies

Concern with the impact of foreign industrial policies on the U.S. economy is just beginning, although in the case of Europe and Japan, such policies are not new. What is new is the growing trend, among both developed and developing countries, to

"target" growth industries, particularly for export markets. This trend was accelerated by the rapid shift in international trade balances due to the sharp oil price increases in 1973 and 1979. Japan in earlier years targeted steel, consumer electronics and automobiles to be major export industries, obviously with a high degree of success. Now the Japanese government has directed its attention to semiconductors, computers, commercial jet aircraft and computer-controlled machines and production processes. 1/ Japanese industrial policies have also been directed toward restructuring such industries as shipbuilding and textiles. 2/

French industrial policies have been used to foster, promote and develop industries which the French government believes can excel on world markets. The automobile sector is a major success story in this regard (Renault and Peugeot). In addition, French industrial policies have promoted other industries where cost is secondary to technical quality: armaments, aerospace, heavy engineering and construction (including overseas construction of airports, city subway systems, ports and mines), and computer peripherals. An interminsterial committee of the French government has also designated six strategic "industries of the future" as essential export sectors. The six industries are bioengineering, marine industries, industrial robots, electronic office equipment, consumer electronics and alternative energy technologies. 3/ These specially favored sectors are recipients of government support in a number of areas. For example, the targeted export industries can receive all forms of credit from the Credit National (CN), the major specialized financial intermediary with industry. CN lending is made available to firms in these sectors at an interest subsidy of 2 to 3 percent. In addition, a small CN participation in a new export venture can certify to the banking sector that the project is considered sound, while the absence of CN participation may actually deter banks from bidding for risky ventures.

It's not only the industrial countries that make extensive use of industrial policies. The measures are also prominent in

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1/ Ministry of International Trade and Industry, The Industrial Structure of Japan in the 1980s - Future Outlook and Tasks, Tokyo, 1981, Chapter II.

2/ U.S. General Accounting Office, Industrial Policy: Japan's Flexible Approach, GAO/ID-82-32, June 23, 1982, Ch. 5.

3/ See Joint Economic Committee, U.S. Congress, Staff Report, Monetary Policy, Selective Credit Policy, and Industrial Policy in France, Britain, West Germany and Sweden, June 26, 1981, Chapter II.

the newly industrializing countries. Throughout the 1970s, Brazil has made extensive use of industrial policy measures to build up its industrial base in sectors from mineral processing and steel to automobiles, aircraft and computers. A central aspect of Brazilian government policy is to use foreign direct investment as a central element in its industrial policies. Through various fiscal incentives, control of market access and performance requirements, Brazil has been able to strike agreements with many foreign firms to develop industrial sectors to which the government has given priority. For example, the Brazilian Commission for Concession of Fiscal Benefits and Special Export Programs (BEFIEX) recently approved special export incentive agreements with 22 automotive and capital goods companies involving commitments to export $17 billion worth of products over the next three to seven years. In exchange for these commitments, the companies will receive various fiscal incentives, import privileges and continued market access. Total outstanding BEFIEX export commitments are reported to exceed $50 billion.

The government of Mexico employs similar measures in the automotive, pharmeceutical and petrochemical sectors. The Mexican authorities, emboldened by the absence of any serious international objection to their 1977 automotive decree, are now implementing measures to promote the production and export of computers and related components. These measures will affect U.S. companies forcing them to invest in Mexico and export substantial amounts of computers and related equipment, most of which will come to the U.S. market, as a condition of their continued access to the Mexican market. The effects could be as significant as those resulting from Mexico's automotive decree. The trade effects of that decree are finally being felt as companies like Chrysler, Ford, GM, Volkswagen and Nissan are importing (or will begin next year) substantial amounts of automotive components from Mexico. Within two years, the U.S. market will be feeling the effects of this industrial policy program in the form of billions of dollars of components, including 1.5 million to 2.5 million automobile engines.

Industrial policy measures of a more pervasive nature can be seen in the so called state-directed or centrally-planned economies of the non-capitalist countries. To the extent that trade and investment increases between capitalist and non-capitalist economies, the industrial decisions of governments in the command economies will increasingly affect specific industries in the market economies. Very little is known about the industrial objectives of the non-market economies. The Organization for Economic Cooperation and Development (OECD) recently completed a study on the market-disrupting consequences of increasing East-West countertrade. More anlaysis is needed, however, to accurately assess the industrial implications of opening up market economies to the direct influence of state planning in non-market economies.

The International Impact of Foreign Industrial Policies

There are no systematic analytical efforts being undertaken in the United States to catalogue and assess the impact of foreign industrial policies on the U.S. economy. Increasingly, the business and general news media are carrying isolated stories about trade problems concerning European steel, Japanese semiconductors, Mexican automotive parts, etc. Behind all of these trade problems lies the common thread of foreign industrial policies.

Given the reliance of economic policy in the United States on private market forces to produce socially desirable outcomes, it is perhaps not surprising that there continues to exist a lack of understanding in this country of the current and long-term effect of the industrial policies and export support practices of other countries on the U.S. economy and on U.S. international competitiveness. However, there is little evidence that a blind reliance on market forces alone -- and the willingness to unwittingly accept the consequences of the industrial policies of other governments -- is an adequate basis for the conduct of international economic policy today. For even if the United States were to pursue a consistent laissez faire course, we would find ourselves faced with the continued pursuit of industrial policy and export promotion measures in other countries which would produce what would be regarded as unfair competition and trade distortion. The Houdaille unfair trade practices case filed in May 1982 is just such an example.

This recent unfair trade practice complaint brought by a U.S. machine tool manufacturer has confronted the U.S. Government with the potential impact of Japanese industrial policy on the U.S. machine tool industry. In a well documented complaint, Houdaille Industries charges that the Japanese Government deliberately sponsored the formation of a cartel of Japanese producers for the purpose of acquiring a major share of the U.S. market for numerically controlled machine tools. The cartel was promoted by a host of government policies, including protection from imports, allocation of market shares, sharing of information on research and development, price fixing and joint research. The anticompetitive aspects of these activities were in turn immunized by the Japanese government from antitrust prosecution.

The remedy sought by Houdaille would require the denial of the U.S. investment tax credit for the purchase of Japanese numerically controlled machine tools. Authority to take this action is available under U.S. law. The complaint presents a compelling case that America needs a better understanding of the effect of foreign industrial policies now. It raises the question whether the United States has the tools and insight needed to protect its interests from the adverse effects of these measures.

The Tools of Foreign Industrial Policies

Industrial policies are measures used by foreign governments to restructure, strengthen or promote specific domestic industries. Industrial policies, in the context of a market economy, are used to affect the behavior of firms with respect to specific industrial targets by influencing the potential profitability of investments or the operating conditions of firms.

The most frequently used industrial policy measures are:

1. direct or explicit subsidies;

2. soft financing, official equity participation, loan guarantees;

3. direct government participation including state-owned companies (government control, government-industry cooperation, supervised dissemination of new technologies, etc.);

4. tax and other fiscal measures;

5. technical assistance, training and academic research programs;

6. technology sharing arrangements, joint ventures, cartels and other measures to limit redundancy and competition and to accelerate achievement of industrial objectives;

7. regional or industry assistance programs;

8. requirements concerning foreign investment (co-production requirements, export or import requirements, technology-sharing agreements, etc.);

9. regulatory and standard-setting procedures; and

10. trade policy measures (import restrictions, discriminatory public procurement, export incentives or subsidies, officially subsidized export credits, guarantees or insurance for targeted exports, etc.).

For the purpose of examining reciprocal trade legislation, it should be noted that trade measures are important tools of industrial policy. Many of the specific trade policy issues

LICIT has already addressed - export subsidies, export requirements, officially subsidized export credits - are an explicitly integrated part of industrial policy in many countries. The European Airbus is promoted by highly subsidized export credits; the Mexican automotive industry is being developed with the use of export requirements.

Various types of trade measures are often used as part of a package of policy instruments including many of those listed above, to restructure traditional industries in response to economic and technological change and to the competitive pressures of international trade. Among the activities involved have been labor-intensive activities such as textiles and apparel, footwear and leather products, which have had to face competition from low-cost production in developing countries. Industries which have also been the object of restructuring efforts by governments in the European Community and Japan include steel and shipbuilding.

In addition to these more traditional, basic industries, many governments have used trade measures as part of comprehensive industrial policies for a wide array of mechanical and electrical engineering industries (often including the manufacture of machine tools) which these governments consider to be important elements of modern economies. 4/ These industries embrace both capital goods necessary to the functioning of a sophisticated economy and some consumer durables, in particular automobiles. The objectives of these industrial policies were summarized in a recent OECD report:

> The reasons why governments have been impelled to provide assistance to these sectors include the desire to promote modernization and technological innovation, and sometimes to remedy structural deficiencies, in order to create or maintain efficient production for domestic use and/or to improve competitivity in international markets. It may be added, with reference to automobiles, that in some countries this sector has particular importance in the economy as a consumer of materials, as a sub-contractor to other industries and as a source of employment. 5/

4/ See Organization for Economic Cooperation and Development, Selected Industrial Policy Instruments - Objectives and Scope, Paris, 1978; Part II, "Promotion of Structural Adoptation."

5/ Ibid, p. 94.

With respect to these capital goods industries, the trade measures employed are often geared toward export promotion. Officially supported export credits, as demonstrated in the LICIT pamphlet on The Erosion of America's Competitive Edge, are very important in this regard for countries like Japan, France and the United Kingdom. 6/ While the advanced developing countries also use subsidized export credits to promote the exports of targeted industries, they generally make more extensive use of direct export subsidies and investment-related export requirements. These latter measures have been used extensively by countries such as Mexico, Brazil and Korea.

Specific trade measures are one of a number of tools or measures which are used to strengthen or promote specific industries. It is this combination of policy measures by foreign governments - trade, credit, tax, regulatory, etc. - designed to achieve a specific industrial objective that is of special concern with respect to assessing the effect of foreign industrial policies on the U.S. economy.

In discussing the industrial policy measures of other countries, it is important to remember that governments don't always achieve, and some governments rarely achieve, the specific industrial objectives they set out to accomplish. The key issue, though, is that whether they succeed or fail, the industrial policies can still have important international economic effects.

Policy Options

The Houdaille complaint discussed above raises the issue of how to respond to the foreign industrial policies of other countries which affect the U.S. economy. Possible options for responding can be categorized into three areas: (a) multilateral agreement to limit or prohibit industrial policy measures which have serious adverse international effects; (b) unilateral action under U.S. trade law to restrict access to the U.S. market for products which injure U.S. producers due to the benefits from industrial policy measures of other countries; or (c) domestic economic measures to restructure or strengthen U.S. industries facing competition from the industrial policy results of other countries.

a. Multilateral Agreement

6/ LICIT, The Erosion of America's Competitive Edge, Washington, May 1982.

Discriminatory policies which adversely affect access to other markets and measures which have the effect of distorting trade and investment, such as subsidies, may be addressed under a number of provisions of the GATT and the MTN codes. 7/ However there is no precedent for such GATT-based action and it may prove to be inadequate in practice. The U.S. GATT complaint concerning the trade-related performance requirements of the Canadian Foreign Investment Review Agency may provide some indication of whether existing GATT provisions are adequate to deal with the international effects of industrial policy measures.

Discussions can also be initiated in the OECD, which has already undertaken a number of studies on industrial and positive adjustment policies, concerning the international effects of industrial policy measures to preparing for wider discussions in the GATT and elsewhere. The first objective should be to provide for transparency of policies. Beyond that, analysis of the sectoral effects of various industrial policies could be undertaken to provide for a better understanding of the international effects of such measures.

Any multilateral effort will be a difficult and time-consuming exercise for the United States. Reaching agreement will be especially difficult because of the widely differing philosophies of the countries involved. However, there should be enough common interest in limiting the most predatory or mercantilist types of industrial policies to form the basis for serious negotiation.

b. Unilateral Action

This type of response, such as countervailing duty or antidumping actions, is the option most immediately available but likely to be the most unsatisfactory. First of all, any trade measures taken should be consistent with U.S. international trade obligations to avoid foreign retaliation. Secondly, this type of response is reactive, responding only after other countries have achieved their industrial objectives and have altered the competitive conditions in world markets. It is a defensive response, but not a sufficient tool to achieve satisfactory long-term results. Therefore, unilateral trade policy measures would probably have to be used in conjunction with a multilateral initiative or other forms of domestic economic policies.

7/ See the discussion in LICIT, Performance Requirements, Washington, March 1981, Part V.

c. Domestic Economic Measures

This type of response represents the most significant departure from past U.S. practice. The logic here is that if other governments are going to promote the development of specific industries, the U.S. government should try to ensure that U.S. firms in those industries are thereby not put at a competitive disadvantage. There are many difficulties involved in trying to implement this type of response. A major one is institutional. The U.S. government would need to develop the analytical capability to assess the likely impact of foreign industrial policy measures on U.S industry and international competitiveness. It may be that the result of such analysis is that the industrial policy measures of another country are not having (or are not likely to have) a major adverse effect on the relevant U.S. industry. In that case the appropriate response would be further monitoring of developments in the foreign country, but nothing beyond that.

However, if the analysis of the current or likely impact of foreign industrial policies is found to be significant, then the U.S. government would have to consider an appropriate response. A response could be based on the array of currently available domestic measures including tax, regulatory, antitrust and trade policies. To be effective, some mechanism would have to be formed to coordinate the use of domestic economic measures to achieve the desired industrial objective.

Conclusions

LICIT does not yet have any answers concerning the best way to respond to the challenge of foreign industrial policies. It is an issue the coalition is very concerned about and one that LICIT will examine closely in the coming months.

There are no easy solutions for dealing with the international effects of foreign industrial policies. Our trade policy has been based on the premise that, in general terms, the United States will export products in which it has a comparative advantage and import those products in which it has a comparative disadvantage. This whole premise needs to be reexamined in a world of industrial policies. Comparative advantage, for a wide range of manufactured products, is now determined by the strategic decisions of firms and governments. Should the United States lose specific industries merely because other governments so decide? Are there any economic advantages from international specialization by government fiat? What are appropriate limits with respect to the adverse international effects of the domestic policies of other countries?

The answers to all of these questions are vital for the United States. They should be taken into account in any reexamination of U.S. trade laws and policies. We cannot ignore the growing use and impact of foreign industrial policies any longer. The first step in addressing this problem is to develop the analytical capability to assess the economic implications of the industrial policy measures of other governments for the United States. LICIT strongly urges that the legislation drafted by this subcommittee concerning trade reciprocity contain a mandate to establish such an analytical capability in the government.This analytical capabilitiy should be the focus of Section 181 of H.R. 6773. In addition, the U.S. Government needs to develop a workable mechanism for understanding the implications of its own actions for U.S. international competitiveness and the industrial structure of our country.

The United States cannot avoid trade conflicts by a policy of self-imposed ignorance. If we are not aware of, and do not consult about foreign industrial policies when they are being formulated and implemented, we will instead deal with their injurious effects in trade cases five or ten years later -- such as the hundreds of steel cases filed this year. This is a poor way to carry out commercial policy. The legislation being considered by this subcommittee should try to remedy this inadequacy by improving the government's analytical capabilities as recommended above.

STATEMENT OF THE

METALWORKING FAIR TRADE COALITION

By Arthur W. Davidson
Chairman of the Executive Committee

Submitted August 2, 1982
for Hearings of the Trade Subcommittee
of the House Ways and Means Committee

METALWORKING FAIR TRADE COALITION
c/o Forging Industry Association (Secretariat)
55 Public Square
Cleveland, OH 44113

This statement is submitted on behalf of the Metalworking Fair Trade Coalition. While this organization is barely one month old, it already boasts a membership of twelve national metalworking associations representing industries which, in 1981, accounted for metalworking sales in excess of $53 billion produced in 21,000 metalworking plants normally providing some 1,100,000 jobs but currently estimated at only 870,000 jobs.

Coalition membership is comprised of the following Associations:

Alliance of Metalworking Industries
American Pipe Fittings Association
Cast Metals Federation
Forging Industry Association
Iron Castings Society
National Association of Chain Manufacturers
National Foundry Association
National Screw Machine Products Association
National Tooling and Machining Association
Non-Ferrous Founders' Society
Steel Founders' Society of America
Valve Manufacturers Association

Moreover, by the end of summer, the Coalition expects to have in excess of 20 member associations whose industries normally will account for 1,250,000 jobs and an estimated $75 billion of annual sales.

This dramatic growth has been born of necessity because member plants are essentially "small business" -- averaging some 50 employees per plant. Individually, their political voices are rarely, if ever, heard. Even when banded together in their respective metalworking associations, they simply aren't taken seriously by either elected or appointed government officials.

That is why The Metalworking Free Trade Coalition has achieved such early organizational success. Its significant numbers are designed to attract attention to unfair trade practices on the part of foreign companies and/or their governments. These unfair trade practices have plagued domestic metalworking plants to an increasing degree in recent years. The Coalition is not protectionist. Instead, it seeks the free trade which the Administration advocates. However, to date, free trade has been nothing of the sort because most, if not all, foreign laws concerning trade are dramatically different from U.S. laws and the free enterprise system that has served our nation so well in the past.

Foreign governments not only permit, but encourage and participate in dumping, subsidies to export industries, wildly-liberal credit terms and manipulation of exchange rates.

Two examples of unfair trade practices are attached as exhibits. Exhibit A, copy of a letter from Nissho-Iwai American Corporation, illustrates the principle of "downstream dumping." (i.e., whenever a foreign company/government is restricted in the amount of steel, for example, it can ship to the U.S., it makes up for such lost volume by increasing shipments of fabricated metal parts).

Exhibit B, a letter from Farleigh and Associates, Inc., illustrates subsidization through use of completely unrealistic credit terms.

Foreign governments want their companies to succeed because they recognize that successful businesses mean jobs, taxes and technical progress. All these things are seen as depending on business success, and so they often play a highly coordinating role to systematically reach their goals -- higher export volume of selected products.

In contrast, U.S. government reaction to U.S. business has historically been an adverse relationship, varying somewhere between hostility and neutrality.

"Fair Trade" has simply not existed. When a foreign company with its government's financial support has wanted to get a foothold in the U.S. market -- the largest one in the world -- it has bought its way in by offering selling prices for their metal parts typically ranging from 20% to 40% below their U.S. competitors.

American purchasing agents have been "instant heroes" for their corporations by taking advantage of such drastic price reductions. (Note: These are price reductions, NOT cost reductions! The costs are there; they cannot be avoided. However, they are not always passed along to the customer, but are absorbed unfairly, by the foreign company/government).

The Coalition has many examples throughout its twelve metalworking industries where U.S. companies were technological leaders in their respective fields. In some cases their and new, automated equipment has literally been the best available. Yet these efficient U.S. opera-

tions, leaders in their field, have commonly been underpriced by margins of 25% or more. This is NOT free trade, nor is it fair trade.

If the U.S. government allows a "mis-match" like this to continue (i.e. the small U.S. firm of 50 employees competing with a foreign competitive firm backed up by the economic power of its government), the U.S. will rapidly deteriorate as a producer of goods, as a world leader and as a military power.

It is significant that on the government's list of "43 endangered industries," the first dozen are either members or potential members of the Metalworking Fair Trade Coalition. If the strength of these metalworking industries is allowed to be sapped, our nation will no longer possess the production equipment, the plant facilities or the skilled workforce necessary to assure our defense.

The Steel Industry, other groups, and many individual companies have been notable in spending literally years of time and millions of dollars in bringing their respective cases to court. Members of the Metalworking Fair Trade Coalition and other small businesses in the U.S. do not have the resources to follow the litigation route that is required under existing U.S. laws. Yet, the identical unfair trade practices apply to Coalition members as they apply to the Steel Industry and they are also obvious across the wide spectrum of U.S. industry. That's why the U.S. government must find a solution and be part of it -- they must have "ownership" of the solution.

Ironically, many former U.S. government officials, whether elected or appointed, commonly represent foreign interests. They are lobbyists. They are lawyers. They "know the ropes." These former U.S. government officials are part of the problem because they are -- unwittingly or not -- contributing to the decay of America's productive might by all the means at their disposal, including use of friendships with elected and/or appointed officials currently serving in the U.S. government.

Moreover, while the Coalition and the Steel Industry are supportive of each other's interests in contesting unfair trade practices, neither is under any illusion that, if Steel were to be successful in its current cases and a restriction of imports of steel actually occurs, the foreign suppliers will accept their fate. On the contrary, if stymied in one area, foreign sources will merely switch the emphasis to products in later stages of production. We are then faced with "downstream dumping."

CONCLUSION

It is the purpose of the Metalworking Fair Trade Coalition to seek and obtain government recognition, cooperation and positive action designed to assure fair trade between the United States and its world trading partners.

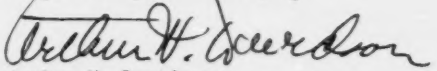
Specifically, we need your assistance to prevent "downstream dumping" of metal parts in the United States.

Secondly, your assistance is needed to seek a short cut to the time-consuming and exorbitantly expensive litigation steps; there ought to be a way the Government could undertake procedings once industry provides pertinent initial facts.

It is our hope that this testimony will assist your Committee in recognizing the common plight of the $75 billion metal parts industry. Further, that the Government must assist in finding a solution because these small businesses, averaging 50 employees per plant, are without the resources to pursue litigation opportunities available through existing U.S. laws/procedures.

We would welcome the views of members of the Trade Subcommittee of the House Ways and Means Committee as to how realism can be built into U.S. trade policies through actions of the Executive and/or Legislative Branches of our Government. Unfair trade practices on the part of foreign companies/governments must be dealt with promptly before the U.S. metalworking industry's manufacturing base is severely eroded or destroyed.

Respectfully submitted,



Arthur W. Davidson
Chairman of the Executive Committee
Metalworking Fair Trade Coalition
c/o Forging Industry Association (Secretariat)
55 Public Square
Cleveland, OH 44113
Telephone: (216) 781-6260

Exhibit "A"

(Attachment to August 2, 1982 Testimony
to the House Trade Subcommittee
from The Metalworking Fair Trade Coalition)

Nissho-Iwai American Corporation

Rockefeller Center
1211 Avenue of the Americas
New York, N.Y. 10036
212/730-2000
For Information
Direct Number

Telex Numbers:
RCA 232641/233567
ITT420405
TWX 710-581-6252
WUI 620-912
WUD 126110/12329

Branch Offices:
San Francisco
Los Angeles
Portland
Seattle
Chicago
Houston
Detroit
St. Louis
Anchorage
Atlanta

February 9, 1978

We are representatives of an excellent quality semi-finished Forging and Casting in all types and sizes produced by our mill in Japan. We have supplied these items to the market here in the United States for the past twenty years. We feel that not only is the quality excellent but, our price is quite attractive.

Would you kindly submit to my attention any Forgings or Castings which may be of interest to you for a quotation. We are under a strict agreement for various types of steel goods, however, Forgings and Castings are not within this quota system, therefore, we can make available our sources for the above mentioned steel products for any quantities without limitation.

If there are any further questions, please contact the writer.

Yours truly,

NISSHO-IWAI AMERICAN CORPORATION

S. R. Thaler
Ferrous Metal Products Department

SRT/smh

Exhibit "B"

FARLEIGH AND ASSOCIATES, INC.

MARKETING SPECIALISTS
407 S. SEEGWUN
MT. PROSPECT, ILLINOIS 60056

FRANK M. FARLEIGH
President

PHONE: 312-253-0499
TELEX: 253-783

30th April, 1982

(Attachment to August 2, 1982 Testimony
to the House Trade Subcommittee
from The Metalworking Fair Trade Coalition)

Subject: New Terms & Prices for Acotupy Industrias Metalurgicas Striking Tools.

Financing is a significant cost of doing business. This is particularly true considering receiving, processing, inventory, transportation, and collection.

[redacted]ration and support from the Brazilian government has made it possible for Acotupy to provide you with most attractive terms free of interest or carrying charges. These terms are:

5% at Documents
47 1/2% at 180 days
47 1/2% at 360 days

Considering this financial leverage we believe you will find t[redacted] attached schedule most attractive.

Phil, have tried a couple of times to reach you by phone. Will keeptrying.

Sincerely

Frank

Frank M. Farleigh

FMF/hf

NATIONAL AGRICULTURAL CHEMICALS ASSOCIATION
THE MADISON BUILDING
1155 Fifteenth Street, N.W., Washington, D. C. 20005
202 • 296-1585 Cable NAGRCHEM

Dr. Jack D. Early
President

August 2, 1982

The Honorable Sam Gibbons
Chairman
International Trade Subcommittee
House Ways and Means Committee
233 Cannon House Office
Building
Washington, D. C. 20515

Dear Mr. Chairman:

I am writing to submit for the record the comments of the National Agricultural Chemicals Association (NACA) with regard to your July 26, 1982 Trade Subcommittee hearings on reciprocal market access/reciprocity legislation.

The National Agricultural Chemicals Association is a nonprofit trade organization of manufacturers and formulators of pest control products employed in agricultural production. NACA's membership is composed of the companies which produce and sell virtually all of the technical crop protection materials (active ingredients) and a large percentage of the formulated products registered for use in the United States.

NACA supports the reciprocity bill as reported out of the Senate Finance Committee and as introduced in the House by Mr. Frenzel (S. 2094 and H.R. 6773, respectively). In particular, H.R. 6773 requires the Administration to identify annually the most serious barriers to U.S. trade and to attempt to quantify them. Therefore, this legislation could have a significant, beneficial impact on the development of American trade strategy. We endorse three of Mr. Frenzel's recommendations for strengthening the 301 process, which would in my view justify the legislation. I refer to:

- The explicit inclusion of "failure to adequately protect industrial property rights" within the meaning of the word "unreasonable" and the word "unjustifiable" as these words are used in Section 301;

- The explicit inclusion of investment within the meaning of the word "commerce" as it is used in Section 301; and

- The amendments to Section 302 of the Trade Act of 1974 authorizing the U.S. Trade Representative to pursue 301 cases on his own initiative.

As the head of an association of manufacturers of agricultural chemicals which are sold in virtually every country of the world, I am deeply concerned with the issues of market access and fair trade which are now being raised in H.R. 6773 and in S. 2094. Specifically, we believe that a firm and immediate U.S. initiative is essential to prevent the deterioration of the U.S. competitive position in the world markets and the erosion of the industrial property rights system upon which worldwide technological and economic advancement is predicated.

The membership of NACA is engaged in the production of proprietary products. These products are the result of extensive and extremely costly research and development over a period of many years. The only way to insure a fair return on investment on such products is to obtain adequate patent protection at the domestic and international level. Many of our member companies have been denied the ability to obtain or protect effectively their industrial property rights abroad, due to foreign government inaction, interference or unwillingness to live up to trade agreement obligations. The legal systems of many foreign countries either do not offer protection for certain categories of industrial property or are not sufficient to provide timely, effective protection of whatever rights may be obtained.

It is important to recognize that the problems of U.S. agricultural chemical exporters are merely representative of a larger, more egregious threat to U.S. competitiveness and orderly world trade. The erosion or rejection of fundamental industrial property rights and basic business considerations undermine the competitiveness of <u>any</u> U.S. product that relies upon technological or developmental factors for its success. And it is common knowledge that U.S. technological advancement is the best, if not the last, hope for U.S. product competitiveness in foreign markets. If rights to the property value of invention, research and development are ignored or emaciated, this not only jeopardizes the ability of U.S. companies to compete overseas, it also chills technological and economic development on a global scale.

Thank you for allowing us to submit these comments for the record. We look forward to the ultimate passage of H.R. 6773.

Sincerely,

Jack D. Early

JDE:etb

cc: International Trade Subcommittee

National Council of Farmer Cooperatives
1800 MASSACHUSETTS AVENUE, N.W. • WASHINGTON, D.C. 20036 • TELEPHONE (202) 659-1525

August 2, 1982

Honorable Daniel Rostenkowski
Chairman, House Committee on
Ways and Means
2111 Rayburn House Office Bldg
Washington, D.C. 20515

Dear Mr. Rostenkowski:

The National Council of Farmer Cooperatives is a broad-based organization that includes over 130 regional farmer cooperatives, representing 90 percent of the 6400 local cooperatives in the United States and some 2 million member farmers.

The National Council is highly concerned about the world trend toward trade barriers and distortions which are severely hurting U.S. agricultural export opportunities. The comparative advantage American farmers have earned by means of their remarkable productivity is being offset by our competitors export subsidies and other unfair trade practices. Our loss of export markets due to such competitive maneuvers is a critical blow at a time many of our farmers are facing economic disaster. For this reason, we support S. 2094 and H.R. 6773, the Reciprocal Trade and Investment Act of 1982. This legislation, as reported out of the Senate Finance Committee in June and as introduced in the House in July, is consistent with the fundamental principles of U.S. foreign trade and investment policies. It reinforces and strengthens the commitment of the United States to enforcement of the legal remedies against foreign unfair trade practices. The bill emphasizes the reduction of foreign barriers to trade as a key focus of U.S. trade policy and can be of great assistance in our efforts to regain our fair share of world trade in agricultural commodities.

The National Council looks forward to working with members of Congress for passage of this legislation in its present form. We would strongly urge that any amendments which are protectionist in nature or which would undermine U.S. international commitments be rejected.

Sincerely,

Robert N Hampton

Robert N. Hampton
Vice President, Marketing &
International Trade

STATEMENT OF U.S. BORDER BROADCAST LICENSEES

BEFORE THE SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON WAYS AND MEANS

OF THE UNITED STATES HOUSE OF REPRESENTATIVES

ON H.R. 5205

Monday, July 26, 1982

Submitted by
Preston, Thorgrimson, Ellis & Holman
1776 G Street, N.W., #500
Washington, D.C. 20006

* * * * * *

Mr. Chairman:

This statement is filed on behalf of 21 U.S. broadcast licensees whose stations are situated near the Canadian border. These stations are KVOS-TV, Bellingham, Washington; WIVB-TV, WGR-TV, and WKBW-TV, Buffalo, New York; WABI-TV and WVII-TV, Bangor, Maine; WAGM-TV, Presque Isle, Maine; KBRJ-TV, Superior, Wisconsin; WICU-TV, Erie, Pennsylvania; KXLY-TV, KREM-TV and KHQ-TV, Spokane, Washington; KTHI-TV, Fargo, North Dakota; WCAX-TV, Burlington, Vermont; WKBD-TV, Detroit, Michigan; WWTV-TV, Cadillac, Michigan; WWUP-TV, Sault St. Marie, Michigan; WROC-TV, and WHEC-TV, Rochester, New York; KIRO-TV and KING-TV, Seattle, Washington.

I. INTRODUCTION

These broadcasters have been significantly injured by Canada's unreasonable denial, through passage of legislation known as C-58, of a tax deduction for advertising placed by Canadian businesses with U.S. broadcasters. Indeed, since enactment of Canadian Bill C-58 in 1976, U.S. border stations have lost access to approximately $20,000,000 annually in advertising revenues from Canadian businesses. We appreciate this opportunity to explain to this committee the reasons for our injury and frustration that the issue remains unreasolved. Most importantly we will demonstrate our determination that this Congress can in fact finally resolve this problem.

We have worked patiently with the Congress and with both the past and present Administrations within the system established by Congress when it enacted Section 301 of the Trade Act of 1974. We have expended substantial amounts of time, effort, and money to pursue a solution within the Section 301 process.

We also have pursued remedies within the private sector, including offering to contribute to a Canadian program production fund. In return for exemption from C-58, each participating broadcast station would have contributed to a Canadian production a percentage of its annual revenues, after agency fees, from advertising directed primarily toward Canadian audiences and placed by Canadian companies. While we would have preferred a totally unencumbered open market for the sale of broadcasting advertising, we suggested the production fund as a realistic compromise. We presented it as a conceptual approach

within which we would be willing to negotiate particular aspects. But at a meeting in April, 1980 between broadcasters representing the National Association of Broadcasters and the Canadian Association of Broadcasters, the Canadians flatly rejected the proposal and labeled it "insulting."

Two presidents have agreed that the Canadian law is an unfair and burdensome restraint on U.S. trade. Prominent members of Congress have sharply criticized the Canadian policy. Congressman Frenzel, a member of this subcommittee, characterized C-58 as "an obviously outrageous law" during a hearing on October 28, 1981. Six members of the Senate Finance Committee wrote to President Reagan urging him to use this dispute to send a clear signal that Section 301 cases aimed at eliminating unfair foreign trade restrictions on U.S. exports will be vigorously prosecuted.

Yet despite a favorable Section 301 decision, despite the strong support of members of Congress, despite our efforts to settle the matter on an industry to industry basis, C-58 remains the law of Canada. We are frustrated, angry, and suffering from the impact of C-58. But also we are encouraged. We are encouraged by the determination to resolve this problem expressed in President Reagan's message to Congress of November 17, 1981. We are encouraged by the sponsorship of the mirror legislation by a distinguished and influential group of senators and representatives. We are encouraged by this hearing.

This statement will review the history of the border broadcast dispute, examine the response of the U.S. and of Canada, describe the impact of the Canadian law, discuss the underlying cultural issue, and suggest a framework for resolving the problem. Several representatives of the border broadcasters will elaborate in oral and written presentations on the impact of the Canadian law and our experience in working through the Section 301 process.

II. BACKGROUND

U.S. broadcast signals have been widely received in Canada since the early 1950s. Television signals are received over the air in comformity with the Canadian-U.S. Television Agreement of 1952, which allocated television channels between the two countries. Subsequently, Canadian cable television systems began to carry U.S. signals. This has enabled most residents of all major Canadian cities and many smaller cities and towns to enjoy high quality, publically demanded American broadcast programming.

The U.S. broadcasting industry developed much faster than its Canadian counterpart since the size of the American population justified greater financial investment by program sponsors in U.S. stations. Canadian viewers and Canadian industry benefited greatly from the rapid development of American broadcasting. Canadian viewers received quality U.S. programming at no direct cost. And as Canadians grew

increasingly fond of watching American broadcast programs, the Canadian cable television industry developed rapidly to spread U.S. signals throughout Canada.

The U.S. border broadcast stations received no remuneration for the television and radio broadcasts Canadians were enjoying until Canadian advertisers recognized the popularity of American programming with Canadian audiences. Then they began purchasing advertising time on U.S. stations to reach Canadian audiences. The total dollar flow was small compared to the overall Canadian and U.S. television industry revenue base, but it became significant to the U.S. border stations, facilitating the provision of quality service to their American and Canadian audiences.

Since 1955 the broadcast station most severely affected by C-58 in terms of percent of revenues, KVOS-TV of Bellingham, Washington, has been liable for Canadian taxes on all its income from advertising revenues received from Canadian sources (based on a negotiated allocation between the two countries). The station also operated the largest full line film production enterprise west of Toronto until it was forced to dissolve this business at the end of December, 1977 to economize in the face of the severe adverse financial impact of Bill C-58.

The government of Canada has adopted several laws and regulations to discourage advertising by Canadian businesses on U.S. television and radio stations. The two most notable and most repugnant policies are commercial deletion and C-58.

Canada announced the practice of commercial deletion in 1971. Cable operators who picked up U.S. signals would be encouraged or required to delete the commericals carried by U.S. stations before transmitting the programming. The effect of this policy, had it been fully implemented, would have been to sharply curtail and probably eliminate advertising by Canadians on U.S. stations. One of Canada's most distinguished newspapers, The Toronto Globe and Mail, characterized commercial deletion as "piracy" in an editorial published in 1976.

In January, 1977, after negotiations conducted by Secretary of State Henry Kissinger, Canada suspended further implementation of commercial deletion and limited the practice to three cities, Toronto, Calgary, and Edmondton. Even so, it still restricts the ability of some U.S. broadcast stations, to market their advertising product in Canada. Commercial deletion remains particularly costly to several Spokane, Washington stations whose signal is relayed by microwave to Calgary area cable systems, some 450 miles to the north.

The respite provided by the understanding reached with Secretary Kissinger was short lived. The Trudeau Government proclaimed Bill C-58 into law in September, 1976. The law became fully effective in 1977 and has remained in place. The critical provision of this law provides:

> In computing income, no deductions shall be made in respect of an otherwise deductible outlay or expense of a taxpayer made or incurred after the section comes into force, for an advertisement directed primarily to a market in Canada and broadcast by a foreign broadcast undertaking.

The effect of this law has been to impose a 100 percent tariff on the export of U.S. advertising services to Canada. As the Vancouver Province explained, "Most corporations operate at roughly a 50 percent tax level. In the old days, if a company spent $1 to advertise on KVOS, 50 cents of it would be paid for by taxes, or rather the lack of them. Now the whole dollar comes out of the client's pocket." (June 30, 1977)[1/]

III. U.S. RESPONSE

The United States government responded quickly to this problem, and in September of 1977 the Senate adopted a resolution, introduced by Senator Moynihan and 16 cosponsors on April 26, 1977, calling on President Carter to "raise with the Government of Canada the question of impact of the recent provision of the Canadian tax code on the U.S. broadcasting industry with a view toward adjusting outstanding differences." (S. Res. 152). The State Department told the Foreign Relations Committee it intended "to keep this matter and its adverse impact on U.S. broadcast interests before the Canadian Government as opportunities to do so arise." (Sen. Report No. 95-402)

Various high level government contacts between Canada and the United States have included discussions of this issue. It has been raised in the context of negotiations on a new tax convention between the U.S. and Canada, at various interparliamentary group meetings, at meetings between high level cabinet and subcabinet officials, and even at the Presidential

level. On May 23, 1978 the U.S. sent a formal diplomatic note to the Canadian government protesting the unilateral imposition of broadcast controls via Bill C-58. Canada has consistently and bluntly rejected all U.S. requests for serious negotiations.

From early 1977 to late 1980, Bill C-58 was a significant factor in the refusal of Congress to modify the Tax Reform Act of 1976 to provide a North American exemption from the restrictions on tax deductibility of expenses incurred in attending business conventions held in foreign countries. For example, on April 27, 1977, the Senate rejected such an amendment by a vote of 48 to 45. Similarly, this Committee reported H.R. 3281 in the fall of 1978 with an amendment that a North American exception to the foreign convention provision should not apply to Canada as long as C-58 continued in effect.

On December 13, 1980, Congress passed H.R. 5973 which revised the tax treatment of the expenses of attending foreign conventions. The law includes a special exemption for Canada and Mexico from restrictions applicable to conventions held in other foreign countries. That privilege was granted to Canada only after Congressman Conable urged Canada to reciprocate the goodwill demonstrated by Congress by being more forthcoming on the C-58 issue and eliminating the discrimination against U.S. television stations.

Canada has ignored Mr. Conable's request and remains intransigent on C-58.

Although the U.S. negotiators raised C-58 during negotiations on the bilateral tax convention between the U.S. and

Canada, they were unsuccessful in pursuing the matter. Chairman Charles Percy of the Committee on Foreign Affairs questioned the Treasury Department during hearings on the tax treaty last September about the Canadian intransigence on C-58 during the aforementioned negotiations. Subsequently, Senator Bob Dole, in a letter to Senator Percy, expressed disappointment that the treaty ignores this issue and urged the Foreign Relations Committee to include the need for its prompt resolution in weighing whether to report the treaty favorably. Senator Dole stated:

> It is unfortunate whenever a tax treaty, particularly one with a developed country, fails to resolve tax discrimination problems between the treaty partners. The dispute with Canada over C-58, Canada's indirect tax discrimination against U.S. broadcasters, is exactly the sort of dispute it was hoped the new Canadian treaty would resolve. I am disappointed that the new treaty, at the insistence of the Canadians, ignores this dispute.

The failure, at least so far, to resolve C-58 in as logical and appropriate a context as the tax treaty negotiations, further illustrates the unreasonable intransigence of the Canadians and explains some of the frustrations felt by the U.S. broadcasters.

IV. SECTION 301 CASE

Nearly four years ago, on August 29, 1978, fifteen U.S. border broadcast stations filed a formal complaint under Section 301 of Trade Act of 1974 with the then Special Trade Representative.[2/] Eight other stations, though not signatories to the formal complaint, filed comments in the 301 proceeding stating their concurrence in the charge that C-58 was an unfair trade

practice. The complaint alleged that C-58 was discriminatory, unreasonable, unjustifiable and burdened U.S. commerce. In November 1978 the STR held hearings on the complaint at which Canadian broadcasters appeared in opposition. The Canadians argued that Section 301 did not encompass trade in services such as border broadcast advertising. In 1979 Congress amended Section 301 and thereby removed any legal argument as to the applicability of Section 301 to border broadcast advertising service. The 1979 amendment also introduced a one-year statutory deadline for resolution of Section 301 complaints.

In February, 1980 the U.S. Trade Representative informed the Canadian government that a final resolution to the complaint must be reached before the statutory deadline of July, 1980. On July 9, 1980 the USTR held hearings on possible remedies. Two distinguished members of the Senate, Senators Heinz and Moynihan, submitted testimony on behalf of the broadcasters. The broadcasters suggested that the President select a combination from among four remedies: duties or quantitative restrictions on exports of Canadian feature films and records to the U.S.; mirror image legislation; continued linkage to the foreign convention issue; and general linkage to other U.S.-Canadian interests. Again Canadian broadcast interests testified.

On July 31, 1980, President Carter, after considering the recommendation of the USTR and the evidence developed in the extensive investigation and hearings, determined that the

Canadian tax practice embodied in C-58 "is unreasonable and burdens and restricts U.S. commerce within the meaning of Section 301."

On September 9, 1980, more than two years after the filing of the Section 301 complaint, President Carter sent a message to Congress calling for the enactment of mirror image legislation. The 96th Congress did not have time to consider the proposal.

President Reagan, recognizing that the remedy proposed by President Carter had died with the 96th Congress, reviewed the case and resolved to solve the problem. After thorough study and careful consideration within several agencies and departments, President Reagan issued a message to Congress about C-58 on November 17, 1981. After noting that a good-faith effort by the USTR had failed to eliminate the offending practice, President Reagan recommended legislation similar to the amendment proposed by President Carter. This so-called mirror bill would deny an income tax deduction for the expense of advertisements placed by U.S. businesses with a foreign broadcast undertaking and directed primarily to a market in the U.S.

Most significantly, President Reagan recognized that this amendment by itself may not cause the Canadians to resolve this dispute. He noted his right to take further action to obtain the elimination of C-58 on his own motion under the authority of Section 301(c)(1). The border broadcasters welcomed President Reagan's determination to solve this problem. We understand that mirror legislation by itself will not be enough. We are fully

aware that stronger action by Congress and the President are necessary or our efforts during the last four years to work within the Section 301 process will have been wasted. Several of our witnesses will elaborate on the patience we have demonstrated and the frustration we have felt in using the 301 process. We urge this committee to use this case, a case endorsed by two Presidents, to demonstrate to other U.S. service industries and to our trading partners that Section 301 can be made to work.

V. CANADIAN RESPONSE

The Canadian government consistently has been intransigent on C-58. Even before the Parliament enacted the bill, Canadian officials adamantly refused to discuss with the United States the strenuous objections of the State Department. United States Ambassador Thomas Enders took the American case to Parliament during its debate on C-58, asking for negotiations to attempt to reconcile the interests of both countries. Although the Canadian Senate Banking Committee proposed conciliatory amendments to Bill C-58, the Canadian Senate rejected those recommendations after intense public debate.

The stated Canadian goal is to keep advertising revenues in Canada to develop its film and broadcast industries. The Canadian government claims to view the matter as a cultural issue and seems to believe the issue represents so few dollars in the mix of Canada-U.S. trade that Canada can succeed by simply refusing to negotiate.

The Canadian government has ignored the recommendation of a commission it established in 1978 to develop a strategy to restructure the Canadian telecommunications system to help safeguard Canada's sovereignty. After analyzing the border broadcast situation, this commission, the Consultative Committee on the Implications of Telecommunications for Canadian Sovereignty, concluded:

> The treatment of the U.S. border stations by Canada has created serious friction between the two countries, which could result in retaliatory measures in other fields of enterprise, and it is clear that there can be no solution that would satisfy the interests of all parties. The subject has been a matter of discussion between officials of the Canadian Department of External Affairs and the U.S. State Department, and in 1976 Canada made proposals for, inter alia, a bilateral treaty on cross-border advertising, but these were unacceptable for the United States. At this point we should like to quote from the brief submitted to us by the U.S. border stations:
>
> > . . . we urge that the problems of the Canadian broadcasting system (in this particular matter) can only be resolved in the context of an amicable understanding between the two countries.
>
> We concur in this statement.

The Commission recommended that:

> The federal government should renew the discussions with the United States with a view to resolving the border television dispute at an early date.
> (Telecommunications and Canada, 45-46 (1979))

More recently, both the legitimacy and the success of the Canadian policy have been questioned by Canadians. One of the most prominent Canadian cable company executives, Edward Rogers,

has called for a review of Bill C-58 by the Canadian government. Referring to Bill C-58 and simultaneous substitution (a policy which requires cable operators to blank out the U.S. signal and substitute the signal of local Canadian stations when a U.S. station broadcasts the same program at the same time), Rogers stated:

> Right now the broadcasters have got their increased cash flow from these restrictions - but the increase in program choice and the deregulation of optional and discretionary services has not been forthcoming.
>
> Bill C-58 should be reviewed by the Canadian government. It has caused great misunderstanding in the United States. Yet there has never been a public accounting by the privileged few companies who financially benefited from this very sensitive legislation. There should be such a public accounting and soon. If the cash flow gains to these relatively few private companies is not going to produce enhanced Canadian programming - then the bill should be repealed. (Speech to Annual Meeting of Shareholders of Canadian Cable Sytems Ltd., January 26, 1981)

The Canadian press also has been critical of C-58. In an editorial headlined, "Heads We Win, Tails Too," the Toronto Globe and Mail criticized the Canadian attitude that produced C-58. The editorial concluded:

> Canada can bluster all it wants about U.S. pressure tactics, but it does so on very shaky moral grounds. Either we recognize that both sides can play at protectionism, and accept the game on those terms, or we should simply stop imposing protective policies.
>
> The United States is not about to let us have it both ways - and, more to the point, we don't deserve to. (July 24, 1980).

The Hamilton, Ontario, Spectator denounced C-58 as piracy in an editorial published on July 15, 1980. It stated:

> The objection the U.S. stations have is valid. Canadian cable-TV companies are, as charged, pirating U.S. programs and inserting Canadian commercials. In essence, they are robbing the U.S. networks and stations. Because the 1975 tax law doesn't allow Canadian advertisers to deduct the cost of advertising on a U.S. station if that advertising is aimed at Canadians, the cable companies are getting paid for pirating U.S. programs because Canadian advertisers buy time from the cable companies.
>
> * * *
>
> And piracy is piracy. If U.S. cable companies were doing the same as the Canadian companies are, Canadians would complain even louder than they do already.

VI. IMPACT ON U.S. BROADCAST STATIONS

President Carter found that Bill C-58 "denies the U.S. border broadcasters access to a substantial portion of the advertising market in Canada, amounting to approximately $20 to $25 million annually, to which they previously had had access." (45 F.R. 51173). The implementation of Bill C-58 has reduced by at least two-thirds the cross-border advertising revenues of U.S. television stations.

Total Canadian advertising revenues derived by U.S. television stations dropped by approximately 50 percent from 1975 to 1977; from $18.9 million in 1975, the last full year before implementation of Bill C-58, to $16.8 million in 1976, and to $9.2 million in 1977. Canadian expenditures on border stations declined further in 1978, to a total of $6.5 million.[3/]

A study undertaken for the Government of Canada indicates that Bill C-58 had reduced the cross-border flow of advertising by about $23 million annually by 1978. The study projected that there would have been $29.5 million of advertising placements in 1978. By subtracting the actual cross-border flow of advertising, the study obtained the estimated loss of advertising ($23 million).

Apart from the loss in annual advertising flow is the decline in the asset value of the U.S. stations along the Canadian border due to Bill C-58. The $23 million decline in advertising flow may have reduced the asset value of such stations by a multiple of three, or $69 million. This reflects the rule of thumb in broadcasting that the asset value of a station is approximately three times the level of annual advertising proceeds.

Bill C-58 also applies to radio broadcasters. Due to apparent laxity in enforcing Bill C-58, the impact on some U.S. radio stations has been delayed. However, a broadcaster in Calais, Maine whose station is the only broadcast outlet for neighboring St. Stephen, New Brunswick, conservatively estimates that he will lose $100,000.00 annually on the basis that approximately one-third of his advertisements are directed primarily at Canadians by Canadian businesses. Several of the witnesses will discuss how C-58 has affected their stations.

VII. SOLUTIONS

The border broadcasters appreciate the deep concerns about national identity and cultural sovereignty that underly Canadian

policies such as Bill C-58. But such concerns do not justify a policy so pointedly unfair and one-sided.

Moreover, it is difficult to understand how Bill C-58 reduces the U.S. cultural presence in Canada. It does not affect in any way the ability or predisposition of Canadians to watch the American programming of U.S. television stations. As the Hamilton Spectator observed in its editorial of July 15, 1980:

> It's one thing to build up pride, to persuade people that a Canadian TV show or a Canadian product is a good buy. That's legitimate in any free-market system.
>
> It's quite another to legislate so that consumers have no choice about what they may or may not purchase, watch or otherwise consume.

The Canadian government apparently has begun to recognize the potential for using profits from popular American programming to develop the Canadian broadcast industry. This concept is implicit in the current proceeding to award licenses for pay television service in Canada.[4/] Supporting Canadian production rather than unilaterally handicapping popular U.S. stations is reasonable. Given the substantial demand for programming generated by cable television, significant opportunities exist for marketing of Canadian programming in the U.S. We welcome such a free flow of programming between our countries. As broadcasters, we are highly sensitive to the cherished values we attach to the free flow of communications. Unilateral obstacles to this free flow, such as C-58, are a particularly repugnant form of trade barrier.

The issue before this Committee today is how to convince Canada that C-58 must be repealed. We fully recognize that the mirror bill H.R. 5205 will have a limited impact, probably at the lower end of $2 to $5 million of revenue lost to Canadian broadcasters. The prospect of such a law has been proven insufficient to move the Canadians. Therefore, we urge this Committee to use the mirror bill as a vehicle for taking stronger action.

When Senator Danforth introduced companion legislation he stated, "It may be necessary to review the recommended remedy at a later date to insure that it is strong enough to persuade Canada that Congress intends to support fully our export industries in the face of discriminatory foreign trade practices." That later date is now. Mirror legislation must be expanded-upon. We suggest that congressional action include the following elements:

1. The U.S. action should symbolize to Canadians that C-58 is unfair and not in the long term interest of the two nations' trade relations.

2. The U.S. action should further symbolize that the Congress and the Administration remain strongly committed to the successful utilization of Section 301 process.

3. The U.S. action should isolate the C-58 issue from other "larger" U.S.-Canadian trade issues;

4. The action should remain sectorally limited to telecommunications issues.

5. The action should be aimed at generating substantial Canadian domestic economic pressure on the Canadian government, preferably from the same Canadian interests which have traditionally supported C-58.

6. The U.S. action should be simple and straightforward but have the effect of gradually becoming more serious in its Canadian impact to heighten the domestic political consequences for the Canadian government the longer it fails to act. Hence the action would not support any Canadian contention that the U.S. has raised the issue to the level of a trade war.

We hope that during the hearing the Committee will explore possible measures which meet these guidelines.

We believe our case provides Congress and the Executive Branch an opportunity to establish two principles of effective trade policy. First, we must stand up to unilaterally imposed, offensive foreign trade practices which unfairly handicap U.S. service exports. Second, recognizing that we have patiently relied on Section 301, the process established by Congress for resolving trade problems, this case presents an opportunity to establish the viability of Section 301, particularly for U.S. service industries.

While we fervently hope that congressional action against C-58 will lead to the removal of this discriminatory trade barrier, until such time the U.S. government should be wary of extending any special favors or benefits to Canada. In this regard, twelve border stations recently filed comments in the

Federal Communications Commission proceeding to authorize the transmission of teletext by TV stations. These stations urged the FCC to "take the opportunity presented by this rulemaking to warn foreign governments, particularly the Canadian government, that the U.S. expects reciprocal openness to their telecommunications markets .... There is no special obligation to Canada since Canada has not treated U.S. broadcasters fairly."[5/]

Finally, we agree with the statement made by former Canadian Ambassador to the U.S. Peter M. Towe last fall. He said:

> These problems - ours and yours - will not be solved by mere finger pointing, much less exaggerated claims and counterclaims. We must strengthen our commitment at the highest level to finding appropriate solutions. (Cong.Rec. S12647, October 30, 1981).

VIII. CONCLUSION

The mirror bill alone is not enough. We urge this committee to expand its effect. It is time to resolve this dispute in a manner consistent with findings by two Presidents.

FOOTNOTES

1/ A copy of this editorial is attached to the statement of Dick T. Hollands.

2/ The fifteen United States television licensees who filed the original § 301 complaint on August 29, 1978 were:
KVOS Television Corporation, licensee of station KVOS-TV, Bellingham, Washington;
Buffalo Broadcasting Co., Inc., licensee of station WIVB-TV, Buffalo, New York;
WPBN-TV and WTOM-TV, Inc., DBA Midwestern Television Company, licensee of station WPBN-TV, Traverse City, Michigan;
Eastern Maine Broadcasting System, Inc., licensee of station WVII-TV, Bangor, Maine;
WDAY, Inc., licensee of station WDAZ-TV, Grand Forks-Devils Lake, North Dakota;
Great Lakes Television Co., licensee of station WSEE-TV, Erie, Pennsylvania;
Johnson Newspaper Corporation (formerly known as The Brockway Company), licensee of station WWBY-TV, Watertown, New York;
Spokane TV Inc., licensee of station KXLY-TV, Spokane, Washington'
Spokane TV Inc., licensee of station KTHI-TV, Fargo, North Dakota;
KMSO-TV, INC., licensee of station KCFW-TV, Kalispell, Montana;
Advance Corporation, licensee of station KFBB-TV, Great Falls, Montana;
International Television Corp., licensee of station WEZF-TV, Burlington, Vermont;
KXMC-TV, Inc., licensee of station KXMD-TV, Williston, North Dakota; and
KXMC-TV, Inc., licensee of station KXMC-TV, Minot, North Dakota.

3/ Arthur Donner and Fred Lazar, An Examination of the Financial Impacts of Canada's 1976 Amendment to Section 19.1 of the Income Tax Act (Bill C-58) on U.S. and Canadian TV Broadcasters, January, 1979, at p. ii.

4/ See Canada Chooses First Licensees for Pay TV, Broadcasting, (March 22, 1982) 32.

5/ Comments of Border Broadcast Stations in BC Docket No. 81-74, In re Amendment of Part 73 to authorize the transmission of Teletext by TV stations.

U.S. Council for an Open World Economy
INCORPORATED
7216 Stafford Road, Alexandria, Virginia 22307
(202) 785-3772

Statement submitted by David J. Steinberg, President, U.S. Council for an Open World Economy, to the Subcommittee on Trade of the House Committee on Ways and Means in hearings on legislation concerning reciprocal market access. August 2, 1982

(The U.S. Council for an Open World Economy is a private, nonprofit organization engaged in research and public education on the merits and problems of developing an open international economic system in the overall public interest. The Council does not act on behalf of any private interest.)

I applaud the emphasis placed by the Administration and many in Congress on the need for other countries, especially the most economically advanced, to remove barriers that unfairly obstruct U.S. access to those markets with respect to goods, services and investment. However, neither the Administration's trade-policy agenda nor the trade bills now in the Congressional hopper adequately address the nation's needs in this regard. S. 2094 in its present form, and the corresponding House bill H.R. 6773, may strengthen procedures and political will to seek equity for American goods, services and investment in foreign markets without the dangers of trade warfare that lurked in the Senate bill in its original form. But these bills tend more toward retaliation against allegedly unfair impediments -- as a device to get these barriers removed, but possibly counterproductive -- than toward steady, substantial progress toward freer, fairer international trade on a truly reciprocal basis. Nor are bills to secure fair treatment for U.S. services and investment abroad likely to produce substantial benefits for the U.S. without an overall free-trade initiative, not now on our national agenda. The highly touted effort to achieve reciprocally lower barriers to trade in high-technology products suffers similar inadequacy.

The overall support the liberal-trade movement has given today's set of reciprocity bills seems based, in large part, on relief that the protectionist dangers in previous versions have been lessened. If supporters of the bills now before this subcommittee see these measures as constituting an adequate, progressive trade strategy for the 1980's, they corroborate the serious inadequacies I detect in the liberal-trade movement.

The Administration has no strategy for rapid, far-reaching progress toward a truly open world economy. It has a loudly proclaimed free-trade stance, but not a free-trade strategy. Its plans fall far short of the dramatic initiative needed to save the world economy from the deeper protectionist pitfalls into which it may slip during this perilous period for all countries. The

other contracting parties of the General Agreement on Tariffs and Trade may not be ready for anything more than the proposed "work programs on longer-term issues" and reviewing implementation of the codes negotiated in the Tokyo Round. But the United States should not lower its sights to the lowest common denominator. It should raise the sights of our own country and the world to the need to seek, with deliberate speed, the freest and fairest international economic system -- indeed optimum reciprocity through negotiation of a free-trade charter (embracing goods, services and investment) with as many industrialized countries as wish to join us in this venture. Once one or more countries negotiate such an arrangement with the United States, all will do so sooner or later. If reciprocity in its finest sense is what the champions of "reciprocity" want, totally free trade, fused with totally fair trade, should be the length and breadth of their perspective.

Presumably reflecting the Administration's view, the Deputy U.S. Trade Representative recently said "reciprocity for the United States means resisting entrenchment and mounting protectionism abroad and nudging our trading partners forward to a level of market openness similar to our own." Such a definition is not good enough. The nudging is too limited, and the slippage too great. If, as the U.S. Trade Representative has said, "this is the most crucial year we have faced in international trade policy since the second world war," this is a time for much more than the Administration is seeking, than anyone in Congress is seeking, indeed more than the U.S. "liberal trade" community (almost without exception) is seeking.

"Reciprocity" Revisionism is Regressive

While much more can and should be done to advance the cause of true reciprocity in the sense so assiduously nurtured with such rewarding results in the last half-century, the least we can and should do is resist a revisionist redefinition that would set in motion bilateral, trade-restrictive reactions to the alleged failure of certain countries to permit U.S. access to their markets substantially equivalent to their access to the U.S. market. This concept of reciprocity, while possibly inducing some short-term liberalization in certain cases, runs the general danger of ratcheting import barriers higher not lower, and the level of world trade lower not higher. The U.S. economy could hardly benefit from bilateral-reciprocity tactics that (a) sock American consumers, (b) sacrifice import-dependent and export-dependent American jobs in the wake of retaliatory or emulative reaction abroad, and (c) suppress the beneficial effects of freer imports on U.S. productivity and overall competitiveness.

The principal sponsor of S. 2094 (the Reciprocal Trade and

Investment Act of 1982) has said that to secure such bilateral equity "the United States must be prepared to force the issue," seeking, not necessarily rigid sector-by-sector, product-by-product equality, but the requirement that "other countries play by the same rules we observe," and to achieve this "without violating existing trade agreements" (quotations from the Congressional Record of February 10, 1982, pp. S678-9). However, notwithstanding his contention that executive action under this legislation would be discretionary with the President ("the bill strengthens the Administration's hand without forcing it"), the new conception of reciprocity (if in fact it can be reconciled with existing U.S. trade agreements and if in fact it is meant to be enforced) would produce a cross between a Pandora's box and a can of worms -- a cross the world economy, and the United States itself, cannot afford to bear.

How is bilateral reciprocity to be measured? By what standards, and whose standards? Is each country free to decide reciprocity, and act on this assessment, in any way it chooses? What assurance can there be, and how enforced, that whatever standards are used will be applied indiscriminately and with equal intensity to all countries? Instead of forcing the issue of equity in trade relations, might we not shoot ourselves in the foot -- or worse? If negotiation of a free-trade charter, and the optimum in multilateral reciprocity which this would engender, seems a fanciful, formidable undertaking, fraught with unlimited complexities, how much less formidable and more manageable would be a train of actions and reactions under the rubric of bilateral reciprocity?

There is an urgent need to change attitudes in Japan and elsewhere concerning international trade -- to persuade these countries to give as much attention to removing import impediments as they give to expanding exports. Referring to Japan's attitude as partly to blame for the current confrontation over that country's import policies and practices, one commentary noted that "the biggest barrier to (Japanese) imports today is a state of mind," and that pressures to get it changed have brought Japan and the West "to the edge of a mutually destructive trade war." This state of mind, I believe, may be traceable in part to something bordering on paranoia in Japan over the country's poor endowment in fuel and raw materials and its overall economic vulnerability in a highly uncertain, undependable world economic environment. Almost without exception, the "fair trade" and "reciprocity" bills in Congress, even if none is passed this year, will only aggravate this troublesome state of mind. As will the threats of Congressional protectionism emanating not only from Congress but from various quarters of the Executive Branch. High-level officials of the Department

of Commerce in particular (in various administrations including the current one) have pursued this tactic as if it was mandated by their oaths of office or prescribed by administrative manuals for their respective posts.

Japan and other countries should be more sensitive to our country's pleas for as much fair play in access to their markets as we accord them in our market. But we should be more sensitive to the danger that, if we force the issue in the wrong way, harmful retaliation and emulation in trade policy may not be the only result. The U.S. image as an ally and a leader might be tarnished, with policy implications that far transcend international commerce. We could conceivably get much more cooperation from Japan if we sought that country's participation in a free-trade charter than is likely from the kind of pressure the United States has used so often in the past and is envisaged in the "reciprocity" bills. Such an initiative would entail reduction and removal of barriers our own country imposes and to which other countries take serious exception. The fact that Japan and other countries resist U.S. requests for removal of their barriers (often vehemently, sometimes bordering on arrogance) may have much to do with a shortage of credibility in America's protestations of devotion to free international trade. Our own resort to import restrictions on many products, and most recently our pressure on Japan to curb its exports of automobiles even though imports did not cause the severe problems of the U.S. auto industry, have not done much for our image as champions of free trade.

Three ways to secure maximum progress toward trade reciprocity in the most respected, most respectable sense of the word are: (1) make the most vigorous, most responsible use of Section 301 of the Trade Act as now written; (2) extend the concept of equity and reciprocity to international services and investment, not limit it to goods alone; and (3) push reciprocity in its most respectable sense to its ultimate dimension: negotiation of a free-trade arrangement by the industrialized countries under the existing rules of the General Agreement on Tariffs and Trade (with as many of these countries as wish to participate), with special privileges and commitments for underdeveloped countries that participate. If indeed the objective of reciprocity is fairness, attention should be given to the fact that the most far-reaching progress toward totally fair trade will not be achieved unless impelled, in fact compelled, by negotiated removal of all discriminatory impediments to international trade, services and investment in accordance with a realistic timetable (permitting departures to help deal with unforeseen emergencies). No "reciprocity" bill now in Congress could possibly ensure significant progress toward this conceptualization of optimum reciprocity and consummate fairness in international commercial relations.

Sector Reciprocity or Harmonization

Sector-by-sector reciprocity is foreign to any reasonable, constructive and responsible concept of international-trade reciprocity. However, with most countries moving inexorably and in many cases rapidly toward increasingly more sophisticated forms of economic development, there is growing need for narrowing and ultimately removing the differences between the barriers which at least the more advanced countries impose on imports of various products, especially manufactured goods. The best known example of proposed sector harmonization is high-technology trade, services and investment. Bills to this end have been introduced in Congress. There are many less exotic instances where sector harmonization (aiming at free trade in these areas) is an idea whose time has come. Steel is an example. The U.S. steel industry has often said it would do well under conditions of free trade in steel on the part of all producing countries (certainly the most significant producers). Other industries have made similar claims. We ought to get on with the job of negotiating such agreements, including carefully drawn rules to ensure fair international competition in these products.

However, the prospects for much progress toward sector free-and-fair trade (if any progress at all) in any product category seem dim except as part of a comprehensive free-trade charter under which optimum reciprocity for each country in goods, services and investment, respectively, and across the whole range of international business dealings, may be ensured.

Shortchanging America

A final note about the free-trade initiative I have advocated in this testimony and in many other places. Some skeptics and critics have called this avant-garde position (unique, incidentally, even in the "liberal trade" movement) fanciful, unrealistic, indeed quixotic (my host in a recent talk show referred to me as a sort of Don Quixote). I shall not here elaborate on my version of the practicality of my proposals -- only re-emphasize that free trade and fair trade are one objective indivisible, achievable by one strategy indivisible. Anything short of this as a goal earnestly to be sought, with a domestic adjustment and redevelopment strategy to backstop it, shortchanges America as a nation and the American people as workers and consumers.

Before the Trade Subcommittee
of the House Ways and Means Committee

STATEMENT
OF
ROBERT J. BLINKEN, CHAIRMAN
UNITED STATES FASTENER MANUFACTURING GROUP

August 2, 1982

The United States Fastener Manufacturing Group supports the strengthening of U.S. laws against all forms of unfair international trade, including discriminatory pricing. Congressional focus on discriminatory practices is particularly appropriate at this time in view of the wide range of antidumping and countervailing duty cases involving steel imports and governmental efforts to settle those cases on the basis of negotiated restraint agreements with supplying countries.

It is vitally important that Congress and the Executive Branch understand that U.S. actions to solve the steel import problem over the years have instead stimulated unfair import competition in fabricated steel products, thereby displacing U.S. production and reducing domestic demand for steel among domestic fabricators of steel. In short, any negotiated settlement of the current steel cases arising under the U.S. antidumping and countervailing duty laws will serve to shift the primary burden of unfair import

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Robert J. Blinken is also Chairman of the Board of the Mite Corporation. The United States Fastener Manufacturing Group is an ad hoc organization comprised of domestic fastener manufacturers whose collective output accounts for a substantial portion of United States production of nuts, bolts and large screws. Approximately 20,000 production and related workers are employed in the U.S. nuts, bolts and large screws industry, in over 100 plants.

pressures onto the steel fabricating sector of the U.S. economy. The same shift would occur even if substantial antidumping or countervailing duties were to be assessed in the current steel cases.

The result is that such actions on steel imports are ultimately self-defeating, because they can be so easily circumvented by the practice known as "downstream dumping". The reason is that there is no provision in U.S. law to prevent circumvention by means of downstream dumping. The absence of such a provision contributes to the import displacement of domestic steel fabricating industries, as well as to the shrinkage of the domestic steel industry itself. Because these industries are critical to the U.S. industrial mobilization base, it seems obvious that Government policies should promote, rather than hinder their viability.

In view of the foregoing, a provision is urgently needed to remedy the incidence of downstream dumping and subsidization, as hereinafter explained. Accordingly, we ask that any bill reported by the Subcommittee in connection with these hearings contain such a provision.

Downstream Dumping

The phrase "downstream dumping" refers to the practice by which a foreign supplier of a basic material or component sells to industrial users in the exporting country (or in third countries) at preferential prices to avoid exposure under the U.S. antidumping or countervailing duty law that would otherwise occur if such materials or components were sold directly to U.S. customers at the same prices.

In the case of steel, this discriminatory pricing practice enables foreign steel mills to dump steel in the U.S. market on a downstream basis, that is, by selling steel at dumping prices to makers of fabricated steel products which in turn export those products to the United States with an unfair production cost advantage. Unfortunately, there is no provision in our antidumping or countervailing duty law, as presently written, which offers a remedy against this type of unfair trade practice. This means that foreign steel mills may do indirectly what they are precluded from doing directly - at the expense of steel fabricating industries in the United States.

The Industrial Fastener Example

The experience of the U.S. industrial fasteners industry illustrates how U.S. measures which act as a disincentive to import steel create a corresponding incentive to import fabricated steel products.

Steel wire rod accounts for roughly 50% of the production cost of industrial fasteners (nuts, bolts, cap screws, etc.) in the United States. Thus, steel is the single most important cost factor for this industry. About 75% of wire rod used in U.S. fastener manufacturing comes from domestic sources.

Under trading conditions that are otherwise fair, we firmly believe that our industry could successfully withstand import competition if the cost of wire rod available to us (from whatever source) were approximately equal to the steel wire rod cost available to our foreign competitors. This has generally not been the case,

however, because various U.S. actions on steel imports have encouraged steel mills abroad to reduce their wire rod prices to our foreign competitors. At the same time, the U.S. actions have caused an increase in our cost of both imported and domestic wire rod.

The diversion of wire rod imports into fastener imports was first observed when the Voluntary Restraint Arrangements (VRA's) on steel were in effect - under State Department auspices - during the 1969-1974 period. Between 1971 and 1972, for example, imports of carbon wire rod decreased by 305 million pounds, while imports of nuts, bolts and large screws increased by 95 million pounds during the same period. While the VRA's were in force the import share of the U.S. market for nuts, bolts and large screws rose from 21% in 1969 to 36% in 1974.

The downstream dumping of steel was repeated under the Trigger Price Mechanism (TPM) which was put into operation in 1978, even though advance warnings were sounded within the Executive Branch, the steel industry and the fastener industry that the TPM would likely stimulate additional imports of fabricated metal products. In its December, 1977, report to the President the Administration's steel task force acknowledged:

> "The system extends only to steel mill products: Hence, there is some risk that steel fabrications will substitute for the more basic steel products in U.S. imports, as occurred during the quantitative import restrictions on steel mill products imposed in the late 1960's". 1/

1/ Solomon Report to the President, "A Comprehensive Program for the Steel Industry" (Dec. 6, 1977) at p. 19.

Robert Strauss, the U.S. Trade Representative, also noted the probable adverse impact of the TPM on the U.S. fastener industry. In a March 21, 1978, letter to fastener industry counsel, Ambassador Strauss expressed his agreement with the industry's "legitimate concern about the ramifications of trigger prices for carbon steel wire rod on domestic fastener producers".

During Congressional hearings on the Administration's steel program, Edgar A. Speer, Chairman of the American Iron and Steel Institute, warned Congress that the fastener industry and similar industries would become "sitting ducks" for additional import pressures under the TPM.[2/]

During the same hearings the fastener industry stated that the "Treasury Department's Trigger Price Mechanism for steel mill products will further hurt our industry" because it "will further stimulate increased fastener imports".[3/]

Despite all the danger signs nothing was done by the U.S. Government to avoid the pernicious effects of downstream dumping. The TPM was terminated at the beginning of this year. During the period 1978-1981, when the TPM was in effect, imports of nuts, bolts and large screws exceeded 50% of the U.S. market.

The existence of dowstream dumping of steel wire rod was documented during a hearing before the International Trade

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2/ Hearings before Subcommittee on Trade of the House Ways and Means Committee on the "Administration's Comprehensive Program for the Steel Industry" (January 25 and 26, 1978) at p. 79.

3/ Statement of W. Tom Zurschmiede, Jr., on behalf of the United States Fastener Manufacturing Group, ibid. at p. 287.

Commission in September, 1981. There, information supplied by Japanese fastener manufacturers revealed that they were able to buy wire rod from Japanese steel mills at prices substantially less than those offered to U.S. fastener manufacturers. The internal wire rod prices in Japan would have been considered as dumping prices under the U.S. antidumping law if that wire rod had been exported to the United States at those prices. This is evident from the fact that such prices were substantially under the published trigger prices then in effect. This demonstrates that the Japanese steel mills were able to avoid exposure under the U.S. antidumping law by the simple expedient of selling wire rod at dumping prices to Japanese fastener manufacturers who in turn channeled the dumped wire rod into the U.S. market in the form of nuts, bolts and large screws.

The range of price preferences (in percentages) is shown in the following table:

Percentage Preference in Wire Rod Prices for Japanese vs. American Fastener Manufacturers (January 1980 - September 1981)

	Percentage Preference (Range) */	
1980	Low	High
1Q	20.1%	- 34.6%
2Q	14.5%	- 30.0%
3Q	9.7%	- 26.0%
4Q	10.8%	- 27.0%
1981		
1Q	7.8%	- 25.6%
2Q	17.7%	- 32.8%
3Q	21.4%	- 35.8%

*/ Size and quality factors for wire rod account for range.

Proposed Antidumping Law Amendment to Close Loophole

To prevent downstream dumping and subsidization, we recommend that the antidumping provisions in Title VII of the Tariff Act of 1930 be amended to define "fair value" so as to include the amount of any preference or subsidy reflected in the price of raw materials or components used in manufacturing or producing a product exported to the United States.

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Richard Veith
Logica, Inc.

August 2, 1982

The Honorable Sam Gibbons
Chairman
House Trade Subcommittee
Committee on Ways and Means
1102 LHOB
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in regard to the hearing on "Reciprocal Trade and Market Access Legislation" which was conducted by the Subcommittee on Trade last Monday, July 26, 1982. It has come to my attention that there was a discussion of whether the legislation dealing with the border broadcasting dispute between Canada and the United States should be amended with the unrelated provision which would damage the growth of the videotex industry in the United States.

As Chairman of the Videotex Industry Association (VIA), an association of over 100 United States companies and individuals (list attached) actively engaged in videotex and teletext development, I want to make certain that you are aware of VIA's position on this issue. At the direction of the Board of Directors of VIA, I expressed to Senator Dole our concern about a proposed amendment, authored by Senator Moynihan, to similar Senate legislation. That amendment would bar tax deductions for expenditures involving the Canadian videotex technology known as Telidon.

VIA recognizes that this legislation grows out of a dispute over Canadian advertising on U.S. television broadcast stations and we take no position on that issue. The proposed amendment, however, extends that dispute to videotex, a totally unrelated and brand new business which has great potential to inform people and make their lives more convenient. The amendment would severely narrow the technological options available to all the U.S. companies that are developing these promising forms of services. It would damage projects that many of our members have already launched involving millions of dollars in expenditures. Even more important, it would abridge the freedom of U.S. companies to choose any system that fits their needs in the open marketplace.

The current North American standard for videotex is the product of innovations by both Canadian and U.S. companies (notably AT&T) which have built on each other. This legislation seeks to prevent U.S. companies from using that idea because it was partially invented abroad -- an unprecedented kind of trade warfare. By precluding the use of Telidon, a Canadian concept for drawing graphics which is an integral part of the composite "North American Standard" for all videotex systems, such an amendment would stifle the use of all equipment and services using that standard including items produced in the United States. If such an amendment is made to the House bill, whether or not it becomes law, adoption by your committee could create uncertainty that would set back U.S. progress in all forms of electronic publishing.

This proposal has already been attacked in the Senate Finance Committee by a group of prestigious American companies led by TIME, Inc,; AT&T; Apple Computers, Inc.; General Instrument Corp.; Hallmark Cards, Inc.; NBC; RCA Corp.; The Times-Mirror Co.; and Video Data Systems. We urge you and your committee to defeat any such proposal.

Sincerely,

LARRY T. PFISTER
Chairman

LTP/jc
Attachment

cc: Trade Subcommittee

VIDEOTEX INDUSTRY ASSOCIATION

MEMBER FIRMS AS OF 6/29/82

Abel & Associates, Inc.
ADP/Telephone Computing Service
Amdahl Communications Systems Division
American Telephone & Telegraph Co. (AT&T)
Applied Digital Data Systems Inc.
Aregon Viewdata, Inc.
Arete Publishing Company
Arlen Communications, Inc.
Associated Press
BCI, Inc.
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Candle Corporation
Cavanagh Associates
Chillicothe Telephone Company
Citcom Systems, Inc.
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Communication Studies and Planning, Ltd.
Communications Engineering Services, Ltd.
Communications Technology Management, Inc.
Composition Systems Inc.
CompuServ, Inc.
Computer Graphics Lab, Inc.
Consulting Resources for Management
Corporation for Public Broadcasting
Cox Cable Communications, Inc.
Datamax, Inc.
Delta Report
Digital Equipment Corporation
Direct Mail/Marketing Association
Directory Computer Service Company

VIA MEMBER FIRMS As of 6/29/82

Dispatch Electronic Information Systems
Durham Herald Company
Gartner Group
General Videotex Corporation
Group W Cable
G. W. Harper Associates
Hearst Corporation
Hewlett-Packard
Hoke Communications, Inc.
HomeServ
Information Systems Marketing, Inc.
InnoSys, Inc.
Institute for the Future
Intelmatique
International Business Machines (IBM)
International Interact Corporation
Investors Diversified Services, Inc.
ISO Communications, Inc.
JFR Communications Engineering
KCET-TV
Link Resources Corporation
Logica, Inc.
Macrotel, Inc.
Management Horizons, Inc.
Manning, Selvage and Lee
McCann-Erickson, Inc.
NABU Manufacturing Corporation
National Captioning Institute
National Liberty Marketing, Inc.
NewsNet
NCR Corporation
North American Philips Corporation
North American Teleshopping, Inc.

VIA MEMBER FIRMS

As of 6/29/82

Ohio University Telecommunications Center
Online, Inc.
PlayCable Company
Reymer & Corsin Associates, Inc.
San Diego State University/Communications Center
Schiff, Hardin & Waite
Shragge Media Services
Source Telecomputing Corporation
Southern Satellite Systems, Inc.
Stone & Adler
SysDes, Inc.
Time Video Information Services
Tocom, Inc.
Tymshare
United Media Enterprises
United Press International
Unitex Video Graphic Systems
Videodial, Inc.
Videodisc Broadcasting Company, Inc.
Videotex America
Viewdata Corporation of America
ViewMart, Inc.
V.N.U. Amvest, Inc.
WGBH Educational Foundation
WSWS-TV
Yankee Group, Inc.

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